

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-212858

DATE: December 23, 1983

MATTER OF: Lockheed Engineering and Management
Services, Incorporated

DIGEST:

1. Protest against omission of required clauses under request for proposals is untimely because it was not filed before closing date for receipt of initial proposals.
2. Protest from firm not in line for award if protest is upheld is dismissed because protester does not have requisite direct and substantial interest with regard to award to be considered as "interested party" under GAO Bid Protest Procedures.

Lockheed Engineering and Management Services, Incorporated (LEMSCO), protests the award of a contract for the operation and maintenance of High Energy System Test Facility (the facility) under request for proposals (RFP) issued by the Department of the Army (Army) to any offeror other than LEMSCO. The Army awarded this contract to BDM Management Services Company (BDM). LEMSCO alleges that the Army's failure to include provisions of Defense Acquisition Regulation (DAR) § 7-2003.78 (Defense Acquisition Circular (DAC) 76-25, October 31, 1980) and § 7-2003.79 (DAC 76-17, September 1, 1978), which require evaluation of proposed compensation for professional employees to ensure that professional employees, employed by government contractors, are fairly and properly compensated, is contrary to statute and regulation and invalidates the award to BDM. LEMSCO further alleges that the contracting officer, as required by Office of Federal Procurement Policy (OFPP) letter No. 78-2 and DAR § 12-1007.2 (DAC 76-28, July 15, 1981), failed to "ensure" that the professional compensation plan proposed by BDM was both understood and fully substantiated.

We dismiss the protest.

The Army issued the RFP on December 15, 1982, and the RFP contained a closing date of March 15, 1983. Five proposals were submitted, and the Army determined that four of the proposals were within the competitive range. Prior to and after discussions, the proposal evaluation board evaluated all four proposals as technically equal based on

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the small difference in scores. Since the proposals were considered technically equal, the contracting officer found price to be the determinative factor for award. The contracting officer concluded that BDM submitted the lowest price by several million dollars even after adjustments based on a cost realism analysis.

We consider LEMSCO's protest of the failure of the Army to include the clauses regarding evaluation of professional employee compensation in this RFP to be untimely. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), a protest of alleged improprieties in an RFP must be filed prior to the closing date for receipt of initial proposals. LEMSCO's allegation of the improper omission of these clauses from the RFP relates to alleged deficiencies which were apparent on the face of the RFP. The RFP initial closing date was March 15, 1983, but LEMSCO did not file its protest until August 29, 1983. Accordingly, this aspect of LEMSCO's protest is untimely. M-R-C Joint Venture, B-210482, June 17, 1983, 83-1 CPD 663.

LEMSCO argues that the issue of the failure to incorporate these clauses under this RFP is a significant issue which justifies consideration of a protest untimely filed and cites several cases in support of its position. We have held that, to be considered significant, the issue must be a matter of widespread interest to the procurement community which has not been the subject of prior GAO decisions. See M-R-C Joint Venture, supra. In our view, this case does not satisfy this test.

The Army does not deny that these clauses are applicable to this type of procurement, but rather indicates that they were omitted inadvertently from the RFP and should be incorporated by reference by use of the "Christian" doctrine. Thus, this case does not raise the issue of the applicability of these clauses in future procurements. Furthermore, the Army points out that all proposals contained salaries and benefits for professional employees and, therefore, substantively complied with the DAR provisions concerning the reporting of professional employee compensation. Moreover, a cost realism analysis was performed on all proposals determined to be within the competitive range. Although the adequacy of this cost realism evaluation is challenged by the protester, this analysis included evaluation of salaries and fringe benefits for professional employees.

The central issue in this case involves the evaluation of BDM's proposal, not the omission of the clauses. As noted in the previous paragraph, the Army recognizes that the clauses should have been included in the solicitation; thus, their applicability to future procurements is not in question. Further, we do not find this untimely protest raises an issue of widespread interest to the procurement community which has not been the subject of prior GAO decisions since we have reviewed the validity of cost realism evaluations in the past. Accordingly, we will not consider this ground of protest since it is untimely and does not fall within the significant issue exception.

While LEMSCO's protest that the RFP was defective is untimely, it has timely protested that BDM's best and final proposal should have been rejected as technically unacceptable because its revised price under its best and final was so unrealistic it demonstrated a failure to understand the work to be performed. In this connection, LEMSCO points out that BDM's best and final price was \$6 million below its initial offer and \$6 million below the lowest offer in the initial competitive range. LEMSCO challenges the cost realism analysis of BDM's best and final offer which involved evaluation of BDM's professional compensation costs. The record indicates that the contracting officer determined that the best and final proposals were technically equal and, following established award procedures, awarded on the basis of price. The record further indicates that, assuming LEMSCO's protest that BDM should have been disqualified for award was upheld, the protester is not next in line for award based on the prices offered. Therefore, the protester does not have requisite direct and substantial interest with regard to award to be considered as an "interested party" under GAO Bid Protest Procedures. See Pluribus Products, Inc., B-210444, March 7, 1983, 83-1 CPD 226.

We dismiss the protest.

Larry D. Van Cleave
for Comptroller General
of the United States