

DECISION

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

FILE: B-213026

DATE: February 10, 1984

MATTER OF: S.A.F.E. Export Corporation

DIGEST:

Protester's allegation that its proposal was improperly rejected as technically unacceptable, first raised several months after award, in comments on agency's report, is untimely and not for consideration since it raises new and independent ground for protest which does not independently satisfy timeliness criteria of GAO's Bid Protest Procedures.

S.A.F.E. Export Corporation (S.A.F.E.) protests request for proposals (RFP) No. DAJA37-83-R-0646 issued by the Army Contracting Agency, Europe, for a quantity of document shredders on a brand name or equal basis. S.A.F.E. contends that certain specifications included in the RFP are excessively restrictive and improperly limit competition. We dismiss the protest.

On September 6, 1983, 2 hours before the closing time for receipt of proposals, S.A.F.E. protested to the contracting agency that the solicitation's requirement for equipment with a "shredding capacity of 8-10 sheets of [70 gram] paper" was unduly restrictive because neither the brand name item nor S.A.F.E.'s proposed equipment could meet this requirement on a continuous 24-hour operational basis. S.A.F.E. therefore requested clarification of the term "capacity." Despite its protest, however, S.A.F.E. did submit a timely proposal prior to the closing time.

Later that same day, when the agency proceeded with the receipt of offers, S.A.F.E. sent a protest to our Office which we received on September 14. In the meantime, by letter dated September 7, the contracting officer formally denied S.A.F.E.'s agency protest, noting that the solicitation contained no requirement for a 24-hour operational usage period and that the term "capacity" simply meant maximum operational output. After receiving the contracting officer's letter, S.A.F.E. replied by letter dated September 26, as follows:

"This is to advise you that the validity of our [proposal] . . . is extended through the end of this Fiscal Year.

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"Concerning our protest, although we feel that the impropriety has been removed through your explanation of the specific meaning of the word 'capacity' for you, as it is to be applied to this solicitation, we are still pursuing our protest for reasons stated in previous correspondence.

"Nevertheless, this is a further advice to you that we are willing to withdraw our protest, if the award of [the] contract is to be made to us."

S.A.F.E.'s previously advanced reasons for "pursuing" the protest was its belief that other offerors which were not advised of the contracting officer's interpretation of the term "capacity" may have been discouraged from participating because of the "lack of clarity" of the solicitation. On September 9, S.A.F.E.'s proposal was determined to be technically unacceptable for failing to meet three separate technical requirements, only one of which related to document shredder capacity. The contract was subsequently awarded to another firm on September 30 and the record indicates that S.A.F.E. was to be notified of the award.

In its letter of January 9, 1984, received in our Office on January 16, S.A.F.E., commenting on the agency report, alleges for the first time that the agency improperly rejected its technical proposal as unacceptable and that the contracting officer "reneged" on his definition of the term "capacity." S.A.F.E. therefore concludes that it was improperly denied an opportunity to submit a best and final offer.

We do not consider the contentions made by S.A.F.E. after receipt of the Army report to be timely. We believe that, in general, a protester which is challenging an award or proposed award on one ground should diligently pursue information which may reveal additional grounds of protest. See Policy Research Incorporated, B-200386, March 5, 1981, 81-1 CPD 172. Moreover, we think the diligent pursuit of additional protest grounds is a continuing

obligation of the protester while its initial protest is pending. Also, we have held that separate grounds of protest asserted after a protest has been filed must independently satisfy the timeliness requirements of our Bid Protest Procedures. Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412.

S.A.F.E.'s contentions concerning the rejection of its proposal raise an entirely new issue from its initial protest concerning the alleged restrictiveness of the solicitation. The terms of the solicitation and the actual evaluation of proposals received represent two entirely different events of the procurement process. Moreover, the protester and the agency, prior to and as a separate matter from the technical evaluation that was conducted, clearly agreed on the meaning of the term "capacity" in the solicitation which rendered S.A.F.E.'s initial protest academic. In this regard, a protester may not maintain a protest on behalf of other parties where, as here, it no longer has any economic interest or harm at stake in pursuing the matter. See Sentinel Electronics, Inc., B-212770, December 20, 1983, 84-1 CPD ----.

Thus, the propriety of the subsequent evaluation is a separate issue which itself had to be protested timely. We believe it was not timely protested regardless of whether S.A.F.E. received notification of award from the Army. Where a protester receives a notice of award to a competitor, it is incumbent upon a protester to seek whatever relevant information concerning the award is needed to determine whether a basis for protest exists. See Policy Research Incorporated, *supra*. If S.A.F.E. received a notice of award, it nevertheless did nothing for 3-1/2 months and thus clearly failed to diligently pursue additional information concerning the evaluation which formed the basis for its subsequent protest.

On the other hand, if S.A.F.E. did not receive a notice of award, we think it nonetheless should have made a reasonable effort to keep apprised of the current status of the procurement so that it would have discovered that award had been made and that it had an additional basis of protest. We see no reason, for example, why S.A.F.E. could not have obtained current information regarding the status of the procurement by calling the procuring office. S.A.F.E.'s failure to do anything eliminated any possibility of an effective remedy should a protest of award prove to have merit. We think this delay was unreasonable and reflected a lack of due diligence rendering the protest on this issue untimely in any event.

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See SAFE Export Corporation, B-205501, September 28, 1982,
82-2 CPD 289.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel