

## DECISION



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

29981

FILE: B-215308.5

DATE: December 10, 1984

MATTER OF: Pan Am World Services, Inc.

## DIGEST:

1. Protest that agency improperly excluded a proposal from the competitive range without conducting discussions is dismissed as untimely because it was not filed within 10 days of when the protester received notice that its proposal had been rejected.
2. Issues involving the scheduling of a debriefing ordinarily will not be considered by GAO since such issues are procedural and do not involve the validity of a contract award.
3. In camera review of prices offered in response to request for proposals does not reveal abuse of discretion in excluding proposal from competitive range based on price.

Pan Am World Services, Inc. protests the rejection of the proposal it submitted in response to request for proposals (RFP) No. F41689-84-R-0004, issued by Randolph Air Force Base, Texas. Pan Am complains that the agency improperly rejected its proposal without conducting discussions. The Air Force argues that this protest is untimely and, in any event, is without merit. We agree.

The solicitation sought a contractor to operate the Base Supply Facility at Sheppard Air Force Base, Texas, under a firm, fixed-price contract. The agency issued the solicitation as part of an Office of Management and Budget Circular A-76 cost comparison to determine whether government or contractor operation of the facility would be more economical. The solicitation provided that the agency would award a contract to that responsible offeror whose technical proposal was acceptable and whose price, as evaluated in accordance with cost comparison procedures, was low.

030767

Pan Am submitted both a technical and a price proposal specifying, respectively, how it would operate the facility and at what price. By letter dated May 14, 1984, the agency notified Pan Am that although its technical proposal was reasonably acceptable, the firm would not be considered further for award because its price proposal was not in the competitive range. Pan Am wrote to the contracting officer on May 31 requesting an explanation of how the agency established the competitive range and stating that it did not understand how the agency could find Pan Am's price proposal to be not competitive without conducting discussions and receiving best and final offers. Pan Am also requested a debriefing. When Pan Am received no response to this letter, it contacted the contracting officer by telephone on June 19 and reportedly was told that the agency would debrief Pan Am only after award. Dissatisfied with this response, Pan Am filed a protest with this Office on July 3 complaining about the rejection of its proposal on the basis of price without the opportunity for discussions and the refusal of the agency to hold a debriefing.

In its initial report to this Office, which was a combined response to protests filed by Pan Am and four other disappointed offerors, the Air Force argued that Pan Am's protest was untimely. The agency did not specify the factual basis for this argument, however, and, since it was not otherwise clear from the record as it then existed that the protest was untimely, we requested the agency to prepare a supplemental report addressing both the timeliness and the merits of Pan Am's protest. Based on information contained in the supplemental report, we dismiss the protest in part and deny it in part.

The principal basis for Pan Am's protest is that the agency excluded its proposal from the competitive range without conducting discussions with the firm. Pan Am became aware of this circumstance when it received the agency's letter of May 14, which we now know to have occurred on May 17. Our Bid Protest Procedures state that protests based on other than alleged solicitation improprieties must be filed with either the contracting agency or this Office not later than 10 days after the

basis for the protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1984). Thus, Pan Am should have filed its protest concerning the lack of discussions, either here or with the agency, within 10 working days of May 17, or by June 1. If we assume that Pan Am's letter of May 31 was a protest to the agency, the protest was untimely since the agency now says it did not receive the letter until June 6. If the May 31 letter was not an agency protest, then Pan Am's protest received here on July 3 certainly is untimely since it was filed more than 1 month after June 1.

Pan Am also protests the June 19 refusal of the contracting officer to debrief Pan Am regarding the rejection of its proposal. Although this basis for its protest may be timely--the protester raised the issue here on the tenth working day following June 19--the issue is not one that this Office ordinarily will consider. The reason is that the scheduling of a debriefing is a procedural matter that does not involve the validity of an award. See Reliability Sciences, Incorporated, B-212852, May 2, 1984, 84-1 CPD ¶ 493. We therefore dismiss this aspect of the protest. In any event, the regulations provide that debriefings of unsuccessful offerors are to be held after award, not before. See Federal Acquisition Regulation (FAR), § 19.1002(b), 48 Fed. Reg. 41,102, 42,171 (1983) (to be codified at 48 C.F.R. § 19.1002(b)).

Finally, underlying Pan Am's protest is the firm's apparent disagreement with the agency's determination that Pan Am's price was not competitive. In fact, Pan Am says it has reserved the right to file a detailed protest with this Office when it learns more about the exclusion of its price proposal from the competitive range. The Air Force addressed this issue fully in the supplemental report to this Office, but deleted this discussion from the protester's copy of the report because the regulations prohibit the public disclosure of information about competitors' proposals prior to award. See FAR, § 15.413-1(a). Since very little likely would be gained by postponing our consideration of the issue, we reviewed the supplemental report in camera to determine whether the rejection of Pan Am's proposal was improper. We conclude that it was

29981

B-215308.5

not. Our discussion here is limited because the agency has not made an award yet.

A competitive range determination is primarily a matter within the contracting agency's discretion. This Office will not challenge an agency's judgment in this regard unless the record shows an abuse of discretion or a violation of procurement statutes or regulations. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 CPD ¶ 299. We have held that a technically acceptable proposal may be excluded from the competitive range when the offeror's price is substantially higher than the prices of other offerors submitting technically acceptable proposals and the agency determines that the higher-priced proposal has no reasonable chance of being selected for award. See Informatics General Corporation, B-210709, June 30, 1983, 83-2 CPD ¶ 47, aff'd 83-2 CPD ¶ 580 (protester's price was 44 percent higher than that of the low, technically acceptable offeror). We reviewed the range of prices offered in response to the RFP in this case, and we believe the competitive range determination was consistent with our holding in Informatics General Corporation, supra. We cannot conclude that the determination involved an abuse of discretion, and therefore have no basis to question it.

We dismiss the protest in part and deny it in part.

*Sheldon P. Fowler*  
for Comptroller General  
of the United States