

**DECISION**

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

**FILE:** B-220045

**DATE:** December 13, 1985

**MATTER OF:** Boston Intertech Group, Ltd.

**DIGEST:**

1. Protest will not be dismissed for failure to furnish the contracting officer a copy of the protest within a day after filing with GAO as required by GAO's Bid Protest Regulations where the delay did not hamper the protest proceedings.
2. Agency decision to reject an offer is proper where the technical proposal is so deficient that it would require major revisions to be made acceptable.
3. Award on an initial proposal basis, without discussions, is proper where the solicitation advises offerors of this possibility and the competition clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government.
4. Since the protester's offer was properly eliminated from the competition and the protester is therefore ineligible for the award, it is not an interested party to protest the acceptability of one of the remaining eligible offers.

Boston Intertech Group, Ltd. protests both the rejection of its proposal and the proposed award of a contract to Foundation Instruments, Inc., under request for proposals (RFP) No. N00123-85-R-0708, issued by the Naval Regional Contracting Center, Long Beach, California.

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

The RFP was issued as a total small business set-aside on May 20, 1985. It solicited offers for the fabrication and installation of a fiber optic high data rate network at the Pacific Missile Test Center, Port Mugu, California. Five firms submitted offers. Of these offers, three, including Boston Intertech's, were determined to be technically unacceptable for failure to comply with minimum RFP requirements. The technically acceptable offers were submitted by Foundation and by Advanced Fiberoptics Corporation, with prices of \$600,199 and \$1,092,995, respectively. The Navy determined, without holding discussions, that Foundation was the technically acceptable, low offeror and in line for the award.

Upon learning of the proposed award to Foundation, Advanced Fiberoptics filed a size protest with the contracting officer arguing, in effect, that Foundation is nothing more than a sales office in the United States for a large Canadian company. The contracting officer subsequently referred the matter to the Small Business Administration (SBA) for that agency's decision as provided for in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302 (1984).

On September 4, Boston Intertech protested orally to the contracting officer. The company complained about: the rejection of its proposal as technically unacceptable; the decision not to hold technical discussions with the offerors; whether Foundation qualifies as a small business; and whether it was proper for the agency to contract with Foundation in view of restrictions imposed by the Buy American Act and the fact that more than 50 percent of the items Foundation intends to supply allegedly are manufactured in either Canada or Norway. The contracting officer, however, did not respond favorably to Boston Intertech's arguments. Therefore, on that same day, September 4, Boston Intertech prepared a protest to our Office. We received Boston Intertech's letter on September 6, but the contracting officer did not receive a copy of the letter until September 11.

As a threshold matter, the Navy believes that the protest should be dismissed because of the company's failure to furnish a copy of its protest letter to the contracting officer not later than 1 day after it filed the protest in our Office, as required by section 21.1(d) of our Bid Protest Regulations, 4 C.F.R. part 21 (1985).

The purpose of section 21.1(d) is to prevent any delay that would hamper the ability of the contracting agencies to meet the 25 working day statutory deadline for filing protest reports with our Office. Container Products Corp., B-218556, June 26, 1985, 64 Comp. Gen. \_\_\_, 85-1 CPD ¶ 727. Section 21.1(f) of our regulations gives us the discretion to grant exceptions to this requirement, and we believe that an exception is called for here. We base this determination on the fact that the contracting officer had actual knowledge of the grounds of Boston Intertech's protest on September 4; that we received the agency report 2 days before the statutory deadline; and that the agency did not formally refer to the protester's failure to meet the 1-day requirement until it filed its administrative report. Rosemount, Inc., B-218121, May 16, 1985, 85-1 CPD ¶ 556. Therefore, it is clear that the delay in the contracting officer's receipt of Boston Intertech's protest letter did not hinder the agency's ability to meet the 25-day statutory deadline, and a strict application of section 21.1(d) would serve no useful purpose. We will consider the protest on the merits.

In reviewing complaints like Boston Intertech's concerning the evaluation of technical proposals, it is not our function to reevaluate the proposals and make our own determination about their relative merits. Rather, that determination is the responsibility of the contracting agency, since it is the agency that is most familiar with its own needs and will have to bear the burden of any difficulties resulting from a defective evaluation. We will not question the decision of procuring officials in evaluating proposals unless it is shown to be arbitrary or in violation of the procurement laws and regulations. Essex Electro Engineers, Inc., et al., B-211053.2, et al., Jan. 17, 1984, 84-1 CPD ¶ 74.

Here, the contracting officer found that Boston Intertech's proposal failed to provide the information requested on pages 24 and 25 of the RFP involving the sections entitled, "Technical Approach Taken," "Potential for Completing the Task in Terms of the Request for Proposals," and "Risk Assessment." The contracting officer points out that the RFP cautioned offerors that the technical proposal must include sufficient information on those topics, and on "Understanding of the Requirements," to enable the agency's technical personnel to evaluate the offers. In the contracting officer's opinion, it would require a complete revision of Boston Intertech's technical proposal to

overcome the proposal's informational deficiencies. Rather than allow this, the contracting officer decided to eliminate Boston Intertech from the competition and consider only Foundation's and Advanced Fiberoptics' proposals for the award.

An agency reasonably may reject a proposal for "informational" deficiencies that are so material that major revisions and additions would be required to make the proposal acceptable. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD ¶ 35. Here, Boston Intertech disagrees with the contracting officer's decision, but does not provide us with any grounds on which to find the evaluation arbitrary or in violation of the procurement laws or regulations. Therefore, we will not question the contracting officer's exercise of discretion in this matter.

Further, as a general rule, a contracting agency may make an award on the basis of initial proposals, without holding discussions or requesting best and final offers, provided that (1) the solicitation advises offerors of this possibility, and (2) the competition clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C.A. § 2305(a)(2)(B)(ii), (b)(4)(A)(ii) (West Supp. 1985). The Navy's RFP specifically advised offerors that discussions might not be held, and we have no basis to object to the award price. Moreover, Boston Intertech's offer was so deficient that the firm clearly would not have been included in discussions in any event. See PRC Computer Center, Inc., et al., *supra*. Accordingly, we cannot find improper the contracting officer's decision to make an award on an initial proposal basis.

In this connection, Boston Intertech complains that it received its copy of the RFP so late that it was unable to attend the on-site inspection held on June 19, 1985. In the protester's opinion, because it was forced to rush the preparation of its proposal, the contracting officer should have allowed discussions concerning "site survey matters in relation to the technical responsiveness of the proposal." This portion of Boston Intertech's protest is untimely, however. The late receipt of the RFP and the protester's inability to attend the on-site inspection were matters that Boston Intertech was fully aware of prior to the date for the receipt of proposals, and it should have protested before that date. 4 C.F.R. § 21.2(a)(1).

Since the protester's offer was properly eliminated from the competition, and since the firm therefore is ineligible for the award, Boston Intertech is not an interested party under section 21.0(a) of our regulations to protest the remaining issues; even if Boston Intertech were correct on these issues, the firm would not be in line for award. See ASEA Inc., B-216886, Feb. 27, 1985, 85-1 CPD ¶ 247.

The protest is denied in part and dismissed in part.

*for* *Seymour Efron*  
Harry R. Van Cleve  
General Counsel