



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Services, Inc.
File: B-227023
Date: May 18, 1987

DIGEST

Protest against alleged apparent solicitation impropriety--amendment imposing allegedly excessive minimum level of effort requirement--is dismissed as untimely when not filed until after the next closing date for receipt of proposals.

DECISION

Services, Inc., protests the award of a contract for janitorial services to Industrial Phases, Inc. (IPI), under solicitation No. 86-113, issued by E.I. Du Pont de Nemours & Co., on behalf of the United States Department of Energy. Services alleges that Du Pont relied on an unjustified minimum required level of effort in making the award, which nullified Services' low-priced initial proposal. Services also claims the costs of pursuing the protest.

We dismiss the protest as untimely and deny the claim.

The two-step procurement began with request for technical proposals, issued on November 23, 1986. A request for cost proposals was issued on December 23 to Services and several other technically acceptable offerors. The solicitation provided that award would be made to the technically acceptable offeror with the lowest total probable sub-contract cost to Du Pont. Services submitted an initial proposal on January 9, 1987, with a total price of \$698,586 for the 2-year contract performance period.

Services' initial proposal was based on a level of effort of 21 persons. When Services submitted its proposal it was the incumbent performing the contract at a level of effort of 26 persons. Services states that Du Pont had been requesting a reduction in that level of effort and Services believed that adequate performance could be obtained with fewer people. Towards the end of January, Du Pont requested Services to reduce its level of effort on the then-current contract, and Services reduced the level of effort to approximately 21

038968

persons. Services contends that this shows the reasonableness of the 21-person level of effort in its initial proposal. Services also states that it based its new proposal on a reduced level of effort because the solicitation for the new contract contained significant reductions in the scope of work compared to the work being performed under the prior contract.

On January 20, Du Pont amended the solicitation to require a minimum level of effort of 26 persons. Services states that while it did not believe that 26 people were required to perform the contract, it submitted a new proposal by the January 26 due date, based on 26 people, at a total price of \$839,380. On March 31, Services was notified that award had been made to IPI on March 30, on the basis of a lower total price of \$811,815.60. Services protested the award to our Office on April 13.

Services recognizes that, under our Bid Protest Regulations, protests based upon alleged apparent improprieties which are incorporated into a solicitation normally must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1986). Janke and Co., Inc., B-225572, Dec. 19, 1986, 86-2 CPD ¶ 710. However, Services contends that the alleged defect did not become apparent until after the award was made, and Services had informal "debriefing-type conversations" with Du Pont. In particular, Services contends that it learned that Du Pont is not certain that it really needs a 26-person level of effort, and that there is a possibility that this requirement will be negotiated downward. Services also contends that it has been suggested that one reason that Du Pont issued the minimum level of effort requirement was in order to have two comparable proposals so that if the contract were negotiated or revised downward, Du Pont could determine which proposal would have a lower cost at any given level. Services acknowledges that these suggestions have not been provided formally or categorically. However, Services contends that it was only after it learned this information that it had a basis of protest. Specifically, Services now alleges that the level of effort amendment was not issued because of Du Pont's actual needs, but to provide Du Pont with two proposals starting from the same assumptions to enable Du Pont to compare the proposals and select the one which was likely to have a lower cost at whatever level of effort finally was selected.

We find Services' timeliness rationale without merit.

Services own argument establishes that at the time the level of effort amendment was issued, Services had available all

the facts which it now advances as to the reasonableness of the requirement. Services contends that it had no basis to protest then because its objection constituted no more than a simple disagreement between a contractor and a subcontractor concerning what level of effort was needed to do a good job. To the extent that this was true then, it is still true and Services has not added any relevant subsequently acquired information.

Services concedes that its information regarding whether Du Pont really needs 26 persons is only in the nature of a "suggestion," and that Du Pont "may" have added the level of effort requirement primarily to place the offers on the same level for downward modification purposes. In fact, the only specific information that Services acquired after the issuance of the addendum was that its best and final price was higher than IPI's, and that this is the reason that IPI received the award. The other information consists of Services' speculation regarding Du Pont's motives, or possible future contract administration actions. We will not attribute unfair motives to procurement officials on the basis of this kind of supposition or speculation; therefore, this does not constitute a basis for protest. B&W Service Industries, Inc., B-224392.2, Oct. 12, 1986, 86-2 CPD ¶ 384; Par Steel Products, Inc., B-221966.2, May 30, 1986, 86-1 CPD ¶ 512.

We further note that Services' argument assumes that the imposition of a minimum level of effort was necessary to enable Du Pont to compare to two offers on an equal footing for reduction purposes. We disagree.

Prior to the issuance of the amendment the RFP required a detailed cost breakdown within each labor category, identifying how each labor rate was determined, both for straight time and overtime. The RFP provided that:

". . . a category might include direct labor, fringes, overhead (detail what overhead includes in \$ and percentages) equipment, general and administrative expense, and profit. Each area above shall be broken down into dollars per unit and also specify percentages where appropriate (i.e., overhead percentage and dollars per labor hour.) Profit per unit shall also be required."

This data itself provides the comparison information which Services alleges Du Pont was attempting to obtain by imposing the minimum level of effort requirement.

Based on the foregoing, we find that no new information was provided to Services after the amendment which added to Services' basis of protest, or which provided a basis of protest.

The protest is dismissed, and the claim for the costs of filing and pursuing the protest is denied.

for *John F. Mitchell*
Robert M. Strong
Deputy Associate
General Counsel