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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Audio Visual Concepts, Inc.  
File: B-227166  
Date: July 24, 1987

## DIGEST

Where the record of the questions and answers at the pre-bid conference is furnished to all bidders in a writing signed by the contracting officer, this letter meets the essential requirements for a solicitation amendment. Therefore, if the protester considered the solicitation as amended by this letter to be improper, it was required to protest the apparent impropriety before bid opening.

## DECISION

Audio Visual Concepts, Inc. (AVC) protests any contract award under invitation for bids (IFB) No. F04626-87-B0039, issued by the Department of the Air Force, Travis Air Force Base, California for the management and operation of the audiovisual service center at Travis. The work includes furnishing visual information management, graphic and photographic services and products, and visual information library services in accordance with the solicitation's performance work statement (PWS). AVC, the incumbent, contends that the Air Force improperly disclosed to bidders privileged and confidential manning data consisting of AVC's current staffing levels under its contract. Accordingly, as a remedy, AVC requests that our Office terminate the ongoing competitive procurement and direct the Air Force to make a sole-source award to AVC.

We dismiss the protest as untimely.

The IFB was issued on April 15, 1987. On May 7, 1987, a pre-bid conference was held. Approximately 10 bidders attended; AVC did not attend. During the conference, a government representative disclosed to the bidders, in response to questions raised, that AVC's current contract staffing is seven employees, including the project manager (the solicitation specifies the work by performance standards in the PWS and does not contain any required

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manning levels).<sup>1/</sup> By letter dated May 12, 1987, the contracting officer sent all bidders minutes of the May 7 pre-bid conference, including written questions and answers, which again contained AVC's manning levels. The contracting officer's letter cautioned bidders that the explanations provided do not qualify the terms of the solicitation which remain unchanged unless the solicitation is amended in writing.

While, as stated above, AVC did not attend the pre-bid conference, the vice-president of the firm was informed by another bidder on May 7, 1987 that the government had released its manning levels at the conference. The vice-president further states that on that day the following events occurred:

"Went to Contracting and spoke with [the buyer]. She confirmed that [the government] had given out our manning and said they were well within their rights to give out this information. [She] referred to her notes from the meeting and asked how was I able to satisfy the requirements of the contract and cover two simultaneous location assignments, cover the studio and still have a reserve photographer to cover alerts when I didn't have four photographers. I looked down and saw her notes contained a breakdown of our staffing plan."

Bid opening occurred on May 18, 1987. AVC filed an agency-level protest which was received by the Air Force on May 22, 1987. AVC subsequently filed a protest with our Office on May 27, 1987.

We think the protest is untimely. As indicated above, the record shows that the Air Force informed bidders at the May 7, 1987 pre-bid conference of AVC's manning levels. Further, the record of the questions and answers at the pre-bid conference was furnished to all bidders by letter from the contracting officer. Although this letter was not formally designated an amendment, it was in writing, signed by the contracting officer, and sent to all offerors. These are the essential elements of an amendment under the Federal

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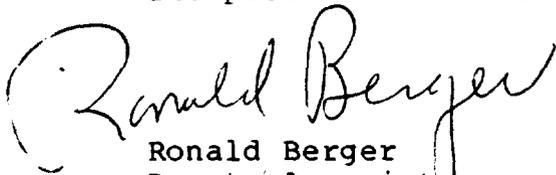
<sup>1/</sup> The contracting officer states that this was the extent of the disclosure and that AVC's specific staffing plan and the job function of its employees were not disclosed. AVC disputes this, asserting that detailed job categories and functions of its employees were also disclosed. In view of our holding, we need not resolve this factual dispute.

Acquisition Regulation (FAR), 48 C.F.R. § 15.606 (1986). See IBIS Corp., B-224542, Feb. 9, 1987, 87-1 CPD ¶ 136. We therefore think the written record of questions and answers constituted an amendment and was binding on all offerors. See Ingersoll-Rand, B-225996, May 5, 1987, 87-1 CPD ¶ 474. Indeed, even the protester refers to the contracting officer's letter, with its enclosures, as a "de facto amendment."

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. Here, the contracting officer furnished all bidders AVC's manning levels by a writing which constituted an amendment to and became a part of the solicitation. We therefore think that AVC was required to protest before the bid opening date. See Ingersoll-Rand, B-225996, supra. Since it did not do so, its protest is untimely and will not be considered by our Office.

Alternatively, even if we assume that the contracting officer's letter of May 12 did not constitute an amendment, the record shows that AVC was aware of the allegedly improper disclosure of its manning levels on May 7, 1987. Our Bid Protest Regulations require protests of other than solicitation improprieties to be filed within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Here, AVC did not file its agency-level protest until May 22, 1987, more than 10 working days after May 7, 1987. Accordingly, we find the protest untimely.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel