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The Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Alascom, Inc.
File: B-227074, B-227075, B-227076, B-227077
Date: August 10, 1987

DIGEST

1. Protest that the agency improperly scheduled a site survey after the closing dates set for receipt of proposals in three solicitations is untimely where the protester waited more than 10 working days after receiving notification that a site survey would be scheduled after closings to file a protest with the contracting agency. Subsequent protest to the General Accounting Office therefore also is untimely.
2. Protest that the agency improperly canceled three solicitations for telecommunications services is untimely where the protester first raised the issue more than 3 months after being notified of cancellation by the agency.
3. Allegation that the agency improperly conducted a second site survey is untimely where the protest was filed more than 10 working days after the protester was aware of the second site survey.
4. Where the RFP stated that award would be made on the basis of price and other factors and also indicated that award might be made to an offeror whose proposal did not meet the beginning date for services, the contracting officer properly awarded a contract to the lowest-priced offeror even though that offeror's proposal indicated that the service date would not be met, as the awardee's proposed prices were significantly below the prices offered by the protester, and the specified date for beginning services already had passed.

DECISION

Alascom, Inc., protests award of a contract to Contel ASC (formerly the American Satellite Company) by the Defense Commercial Communications Office (DECCO) pursuant to requests for proposals (RFP) Nos. NA25APR860923B,

039688/133685

NA21AUG861402, AL01OCT860001,^{1/} and NN06NOV860002A. The contract is for providing telecommunications services between Adak Naval Station, Alaska, and Hickman Air Force Base, Hawaii, and each RFP represented a different telecommunications circuit. Alascom alleges that the award to Contel is invalid, because the procurements were conducted improperly. Alascom requests that all four requirements be resolicited.

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

DECCO issued solicitations No. NA21AUG861402 and No. AL01OCT860001 on October 21, 1986; both RFP's required that proposals be submitted by October 30. DECCO issued RFP No. NA25APR860923B on November 26, with a December 11 closing date. After receiving offers, DECCO scheduled a site survey for February 5 and 6. Alascom's representative arrived on Adak on February 4; however, on February 5, a bad snowstorm struck Adak, and the commercial plane carrying Contel's representative was unable to land despite two attempts to do so. DECCO officials made a preliminary decision to cancel the site survey planned for February 6, but ultimately decided to accommodate Alascom rather than to reschedule a site visit with Alascom at a later date, because Alascom's representative was already on Adak and had expended considerable time and effort and traveled a considerable distance to get there as scheduled. Contel's site survey was rescheduled for February 24.

In the interim (on February 18), DECCO canceled the three solicitations previously issued. Basically, DECCO canceled these RFP's because they did not contain a provision (clause I-nine) which reserved to DECCO the right to award a contract for all three requirements as a single package to one company, so that DECCO could take advantage of lower prices which might be offered if the requirements were combined. Accordingly, on February 18, DECCO issued three new solicitations for the same three basic requirements. These new RFP's all contained March 27 service dates.^{2/} On February 18, DECCO also issued solicitation

^{1/} The first three RFP's were canceled on February 18, 1987, and reissued with various modifications on the same day. When reissued their numbers were changed slightly to: NA25APR860923C, NA21AUG861402A, and AL01OCT860001A. Basically, the original and reissued solicitations represent the same requirements.

^{2/} The "service date" specified in the RFP is the date on which service is to begin.

No. NN06NOV860002A for yet another telecommunications requirement; this RFP specified an April 6 service date. All four of these new solicitations set February 27 as the closing date for receipt of proposals, and also incorporated clause I-nine.

Protest and Discussion

Alascom's first three issues are untimely under our Bid Protest Regulations, 4 C.F.R. part 21 (1987). Alascom first contends that DECCO improperly scheduled the site survey after the closing dates specified in the original solicitations. However, Alascom first raised this matter in a protest to DECCO filed by telegram of January 8, 1987. Our Office will only consider a protest which first has been filed with the contracting agency if the agency-level protest was timely filed. 4 C.F.R. § 21.2(a)(3). Alascom waited more than 10 working days after it was informed that a site survey was scheduled after the closing dates to file its protest with DECCO, so that Alascom's protest to DECCO was untimely. 4 C.F.R. § 21.2(a)(2). We therefore will not consider this aspect of the protest to our Office.

Alascom next argues that DECCO should not have canceled the three original solicitations as it did on February 18, and instead should have awarded Alascom contracts under them since it was "the only responsive bidder." Alascom knew of the cancellations on February 18 and, therefore, under our Bid Protest Regulations Alascom had to protest within 10 working days afterwards. 4 C.F.R. § 21.2(a)(2). Instead, Alascom waited until June 7, when it filed its comments on the agency report on its protest, to raise the matter with our Office. Accordingly, we dismiss this protest issue.

Third, Alascom charges that DECCO improperly conducted two separate site visits, one on February 6 with Alascom, and another on February 24 with Contel. Alascom alleges this second, private, survey created "the possibility for prejudice."

By its own admission, Alascom was aware on February 24 that DECCO had conducted a second site survey with Contel alone on that same date. Since Alascom was aware of this basis for protest on February 24 but did not protest until April 29, the issue is untimely. 4 C.F.R. § 21.2(a)(2). In any event, in view of the severe weather conditions which prevented the Contel representative from landing on Adak in time for the original site survey, we believe that DECCO did what was necessary to accommodate Alascom and yet to allow Contel to compete, and conducted the competition fairly in that regard. There is no evidence of any wrongdoing by any party; nor is there any evidence of prejudice suffered by

Alascom. In these circumstances, we do not believe the second site survey was improper. See for example 51 Comp. Gen. 85 (1971).

Alascom next argues that, because it submitted the only offers that could meet the service dates, it should have been awarded this contract. We do not agree.

The RFP's stated that contract award would be based on the conforming offer that was most advantageous to the government, price and other factors considered. With regard to the specified service dates, the RFP's provided:

"Proposals offering a service date not later than that shown on the inquiry will be evaluated equally as regards to meeting the service date. In the event no company can meet the required service date, and all other factors are equal, the government reserves the right to make an award to that company who offers the earliest stated service date."

Alascom and Contel submitted proposals for all four requirements by the common closing date.^{3/} All four Alascom proposals stated that Alascom could meet the service dates indicated in the RFP's, or (15) days after receipt of an order. On the other hand, Contel's proposals stated that Contel could meet a service date of 90 days after receipt of a firm order. (Contel needed to build a satellite earth station on Adak.) However, while DECCO was evaluating the offers, both the March 27 and April 6 service dates passed, so that by April 13, the date DECCO awarded the contract, it was literally impossible for either offeror to meet the service dates.

DECCO determined that the offers received from Alascom and Contel were technically acceptable. DECCO calculated that award of all four requirements to Alascom would cost a total of \$515,516, while award to Contel would cost only \$374,400--a savings of \$141,116. Accordingly, the contracting officer awarded the combined contract with a July 1, 1987, service date to Contel on the basis of Contel's lower price.

It is clear from the above-quoted RFP provision that the RFP contemplated that award might be made to an offeror even though its proposal(s) indicated it would not meet the service dates. While the RFP reserved to the Army the right

^{3/} Offers were also submitted by Western Union International but they were later withdrawn.

to award to a firm offering the earliest service date, it was not mandatory that the Army do so, and the RFP specified further that such award would only be made "where all other factors are equal." Clearly, as Contel's offers represented a savings of more than \$141,000, DECCO properly decided that all other factors were not equal and that it was not worth spending so much more to obtain earlier service. See Kreonite, Inc., B-222439, July 11, 1986, 86-2 C.P.D. ¶ 60. This was especially true since three of the four requested circuits were already in existence and services were already being provided by Alascom. In view of the fact that both Contel's and Alascom's offers were technically acceptable and that there was a significant difference in the offered prices, we cannot fault the contracting officer for awarding the contract to Contel. Accordingly, this protest issue is denied.

Alascom also contends that the service date was a material requirement which should have been changed by DECCO, if at all, by issuing amendments to the RFP's--thereby putting Alascom on notice of the longer time period before services were required and allowing Alascom to offer a different configuration of equipment at more competitive prices. We are not persuaded by this argument. We do not believe the service dates were material here because, as indicated above, the RFP's expressly stated that award might be made to an offeror that did not meet them. Further, Alascom has not shown how it could have reduced its prices or how it was competitively prejudiced by the award to Contel using a later service date. The protester bears the burden of showing that it suffered competitive prejudice, and this is especially important here where the price differential is great. See for example KET, Inc.--Request for Reconsideration, B-190983, Jan. 12, 1981, 81-1 C.P.D. ¶ 17.

Finally, Alascom alleges that DECCO did not promptly notify Alascom that its offers had not been accepted as required by the Federal Acquisition Regulation, 41 C.F.R. § 15.1001(c) (1986). Alascom states that, while the contract was awarded to Contel on April 13, DECCO did not send out notification that award had been made until April 20, and charges that this delay prevented Alascom from obtaining the benefit of having contract performance suspended as required by the FAR (48 C.F.R. § 33.104(C)) and our Bid Protest Regulations (4 C.F.R. § 21.4(b)) pending resolution of its protest by our Office. In view of our findings above that the issues raised by Alascom are either without merit or are properly for dismissal, we need not address this argument as Alascom

has not been prejudiced by the delay. See Free State Reporting, Inc., et al., B-225531 et al., Jan. 13, 1987, 87-1 C.P.D. ¶ 54 at 4.

The protest is dismissed in part and denied in part.

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