



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joseph H. Carter
File: B-227094.2
Date: November 9, 1987

DIGEST

1. Where protester received amendment to Request For Proposals 6 hours prior to closing, it has 10 days after closing to file a protest that its offer was rejected as late. Protest received after the 10 day period is untimely.
2. Where protester's best and final offer (BAFO) properly was determined late and, therefore, proposal was not considered and the protest alleging insufficient time was permitted for submitting the BAFO is untimely, a protest against an award because of deficiencies in awardee's proposal and improper evaluation of the proposal is dismissed because protester is not an interested party.

DECISION

Joseph H. Carter (Carter) protests the award of a contract to A.M. Rieser, M.D., Inc. (Rieser), under solicitation for offer (SFO) No. GS-09B-86159, issued by the General Services Administration (GSA) for the 8-year lease of approximately 7,379 square feet of office space for a Social Security Administration field office. Carter alleges that its offer was lower than Rieser's and that Rieser does not control or own the property on which Rieser has offered to build. In addition, Carter alleges that it had insufficient time to prepare a response to amendment No. 5, resulting in its proposal being rejected as late.

The protest is dismissed.

GSA issued the SFO on September 9, 1986, and issued amendment No. 4 on May 8, 1987, to meet several objections Carter had raised in an earlier protest to our Office. Since amendment No. 4 deleted the alleged improprieties from the SFO, Carter's earlier protest was dismissed as academic.

Subsequently, on June 23, GSA issued amendment No. 5. This amendment revised paragraph 9, "Price Evaluation," as follows: "The estimated price of Guard Service is added."

Amendment No. 5 also requested "satisfactory evidence of at least a conditional commitment of funds in an amount necessary to propose the space. . ." Best and final offers (BAFOs) were requested by 4 p.m. on June 25.

The contracting officer's representative states that she contacted all of the offerors on June 23 to inform them that amendment No. 5 was issued to allow revisions in BAFOs to reflect the additional evaluation factor of cost of guard service. She states that she spoke with the protester on June 25, at which time he indicated his BAFO would be mailed that day. The contracting officer's representative states that the protester called her on June 26 and told her he had missed the deadline for that day's Federal Express courier and he would forward his offer later. On June 30 the protester's offer, dated June 29, was received and the contracting officer rejected the offer as being late.

The protester contends that although it was contacted by phone on June 23, the contracting offer's representative only discussed amendment No. 5's request for information on financial capability and nothing was mentioned about guard service. Accordingly, the protester states that when it received a copy of amendment No. 5 at 10 a.m., on June 25 it was surprised to read the requirement for pricing guard services. The protester states that since it was not alerted to the request for guard service pricing in the June 23 telephone call, it was only able to get a price on Friday June 26, after the Federal Express deadline for shipments that day. Accordingly, Carter's BAFO was not sent by Federal Express until Monday June 29, and was not received by GSA until June 30.

It is clear that Carter's BAFO arrived after the specified closing time on June 25, 1987, and its proposal was, therefore, properly rejected as late. Carter asks that its offer nevertheless be considered because there was insufficient time to prepare its BAFO after receipt of amendment No. 5.

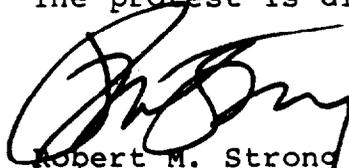
Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation 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) (1987). In cases other than those covered in section 21.2(a)(1), above, protests shall be filed not later than 10 working days

after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Carter did not file its protest at GAO until July 20. On June 25, the day of closing and the date Carter received the amendment, Carter knew or should have known that there was insufficient time to submit its BAFO by the required time and that its BAFO would be late arriving at GSA. Carter, therefore, knowing its BAFO would be late, should have filed a timely protest regarding the short time it had to respond to the amendment. Although protests of solicitation deficiencies must generally be filed prior to closing, given the circumstances here where Carter had only 6 hours to file a protest prior to the closing date, 4 C.F.R. § 21.2(a)(1) is inapplicable because Carter did not have a reasonable opportunity to file its protest before the closing date. Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD ¶ 149.

However, in cases other than those covered by section 21.2(a)(1), protests must be filed not later than 10 working days after the basis for the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Since Carter did not file its protest within 10 working days of June 25, the date it knew its BAFO would be late allegedly because it did not have enough time to respond to the amendment, its protest is untimely. See Culligan, Inc., 58 Comp. Gen. 307 supra. Moreover, since Carter's BAFO and proposal properly were not for consideration, its protest alleging deficiencies in the awardee's proposal and GSA's evaluation of the awardee's proposal is dismissed as Carter is not an interested party since there were two other offerors in the competitive range who have the requisite direct economic interest in the procurement to maintain a protest. 4 C.F.R. §§ 21.0(a) and 21.1(a).

The protest is dismissed.



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