

The Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of: Singapore Aircraft Industries

File: B-229751

Date: December 30, 1987

DIGEST

1. Protest initially filed with the contracting agency is dismissed as untimely when filed with General Accounting Office (GAO) more than 10 working days after the protester received notice that the contracting agency denied the firm's agency-level protest. Protester's continued pursuit of the protest with the contracting agency resulting in a subsequent letter from the agency repeating grounds for denial neither extends the time for filing a protest with GAO, nor provides a new basis for protest.

- 2. Allegation questioning the propriety of an amendment to a solicitation must be filed before proposals in response to the amendment are due.
- 3. Alteration of evaluation plan after receipt of initial proposals by issuance of an amendment to the solicitation is proper where all offerors are informed of the change and given the opportunity to restructure their technical proposals.

DECISION

Singapore Aircraft Industries (SAI) protests the award of a contract to Philippines Airlines Inc. (PAI) under request for proposals (RFP) No. F64719-87-R-0118, issued by the United States Air Force Contracting Center, Clark Air Base, Philippines. The RFP was issued to obtain corrosion control for 12 F-5E aircraft. SAI contends that the evaluation procedure was unfair and unjustified in that certain evaluation factors were added after the receipt of best and final offers (BAFOs).

We dismiss the protest.

The RFP was issued on August 14, 1987 with a closing date of September 11. One amendment was issued extending the closing date to September 14, and 3 proposals were received by that date. Amendment Nos. 0002 and 0003 made changes to the Air Force requirement and Amendment No. 0003 established September 21 as the due date for revised proposals. Amendment No. 0004 added ferry cost as an evaluation factor, made certain changes to amendment No. 0003 and established September 28 as the due date for submission of BAFOs.

After submission of BAFOs on September 28, the Air Force issued amendment No. 0005 which added quality assurance evaluator (QAE) per diem cost to SAI's offer but no cost to PAI's offer. The closing date for the second round of BAFOs was set for September 29. On that day, SAI submitted a revised BAFO and was later verbally advised of PAI's lower price. The Air Force awarded the contract to PAI on September 30.

On October 6, SAI filed a protest of the award with the contracting agency. SAI alleged that some costs apportioned to SAI were unnecessary and unjustified, thereby causing SAI to lose the contract. Specifically, SAI objected to the addition of the QAE per diem cost to its offer and the fact that no such cost was apportioned to PAI:

By telex of October 23, SAI was advised by the contracting officer that its protest was denied. The Air Force indicated that the QAE per diem cost was properly applied to SAI's offer because it was necessary to send at least one QAE to Singapore at least once a week to assist Navy personnel responsible for quality assurance. On the other hand, this cost was not applied to PAI's offer because as a result of its close proximity to Clark Air Base, trips to PAI by a QAE would be done on a same day basis. The Air Force concluded that award to PAI was proper and the most advantageous to the government.

By telex dated November 2, SAI took exception to the contracting officer's denial and questioned the importance of the QAE per diem cost since it was not mentioned in the RFP but only included in Amendment No. 0005 the day after submission of the first round of BAFOs. By telex dated November 23, the contracting agency sent an additional response denying both protests of October 6 and November 2. By letter dated December 3, filed with our Office on

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December 7, SAI protested the Air Force's award to PAI to our Office. In addition to the protest issues raised with the Air Force, SAI also argues that the addition of QAE costs, after the first round of BAFOs and with no prior indication, restricted full and open competition.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1987), provide that when a protest is initially filed with a procuring agency, any subsequent protest to our Office must be filed within 10 working days of knowledge of initial adverse agency action. Blinderman Construction Co., Inc., B-222523, June 16, 1986, 86-1 CPD § 554. Here, SAI's 10 days began to run on October 23, 1987 when the Air Force notified SAI that its protest had been denied. Since SAI's protest was received in our Office more than a month after it was notified that its agency-level protest had been denied, its protest is untimely and will not be considered on the merits.

Furthermore, section 21.2(a)(3) of our regulations is clear that it is knowledge of the initial adverse agency action on a protest at that level that triggers the 10-day period for filing a subsequent protest to our Office. Shelf Stable Foods, Inc.—Request for Reconsideration, B-222016.2, Mar. 10, 1986, 86-1 CPD ¶ 237. Consequently, SAI's continued pursuit of a denied protest with the contracting agency does not warrant our consideration of a subsequently filed protest that does not comply with section 21.2(a)(3). See Bobnreen Consultants, Inc., B-218214.3, May 31, 1985, 85-1 CPD ¶ 636.

Concerning the propriety of amendment No. 0005, any protest of the changes made by that amendment or the amendment itself are required to be filed by the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1); T.R.A.P. Equipment Corp., B-218251, May 15, 1985, 85-1 $\overline{\text{CPD}}$ ¶ 550. Accordingly, SAI's allegation that the issuance of this amendment was improper is also untimely. In any event, the alteration of an evaluation plan after receipt of proposals by issuance of an amendment to the RFP is proper where, as here, all offerors are informed of the change and subsequently given the opportunity to restructure their proposals in response thereto. See Columbia Research Corp., 61 Comp. Gen. 194 (1982), 82-1 $\overline{\text{CPD}}$ ¶ 8.

SAI asks that if we find its protest untimely, we consider its protest under the "significant issue" exception to our timeliness regulations, 4 C.F.R. § 21.2(c). This exception, which we construe strictly, is limited to untimely protests

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that raise issues of widespread interest to the procurement community which have not been considered on the merits by this Office in a previous decision. Filmore Construction Co., B-228656, Aug. 7, 1987, 87-2 CPD ¶ 141. This protest does not raise such issues. Accordingly, we will not consider this protest on the merits under our significant issue exception.

The protest is dismissed.

Ronald Berger

Deputy Associate General Counsel