



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Inter-Con Security Systems, Inc.

File: B-235248; B-235248.2

Date: August 17, 1989

DIGEST

1. Protest of alleged solicitation improprieties which are apparent on the face of the solicitation is dismissed as untimely where not filed until after the closing date for receipt of initial proposals.
2. Protest of alleged conflict of interest is denied where there is no indication that the actions of a former government employee prejudiced the award selection process.
3. Where a proposal fails to include technical information called for by the solicitation, which is necessary to establish compliance with the solicitation requirements, it was proper to eliminate it from the competitive range.

DECISION

Inter-Con Security Systems, Inc., protests the Department of State's actions under request for proposals (RFP) No. CR89-S112-FA-449 for overseas security guard services for the United States Embassy in San Jose, Costa Rica. Inter-Con claims the requirement was not properly synopsisized, the RFP contained improper provisions, and the rejection of its proposal as technically unacceptable was improper.

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

The U.S. Embassy in San Jose, Costa Rica, awarded its first commercial security guard contract to Inter-Con in April 1988, under which performance began on May 1, 1988. The contract with Inter-Con provided for a base year plus 2 option years which were to be exercised solely by the government to extend the term of the contract.

Based on a finding that the government's requirements for the guard services had changed, specifically that the agency required maintenance of the government-furnished property, the contracting officer decided not to exercise the option

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in Inter-Con's contract, and Inter-Con was so notified by letter dated February 7, 1989. The RFP, as amended, requested proposals for 1 year of guard services by the closing date of April 17. Eleven proposals were received, including 1 from the protester.

On April 19, Inter-Con filed its first protest with our Office alleging: (1) the agency improperly failed to synopsise this requirement in the Commerce Business Daily (CBD); (2) the RFP contained terms which violated local Costa Rican labor laws; (3) the solicitation contained an improper alternative to the Termination for Convenience clause; (4) the solicitation included a clause which incorporates a practice prohibited by Federal Acquisition Regulation § 37.104, "Personal Services Contracts"; and (5) the involvement of a Marine Corps guard in the procurement constituted an unfair conflict of interest.

After Inter-Con had filed this protest, the agency's technical evaluation panel evaluated the proposals and determined that Inter-Con was not in the competitive range. On May 18, the protester was notified of this determination. On May 30, Inter-Con filed a second protest with our Office challenging the rejection of its proposal as technically unacceptable.

Initially, the Department of State claims that the protest should be dismissed because Inter-Con is not an "interested party" under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1988). The agency argues that even if the protest were sustained, Inter-Con would not be eligible for award because its proposal was determined to be outside of the competitive range. We disagree on two accounts. First, Inter-Con has challenged the propriety of the rejection of its proposal as technically unacceptable. Second, where, as here, a protester seeks cancellation and resolicitation of a procurement, it is an interested party, since, if it prevails, it will have the opportunity to compete under the new solicitation. Shemya Constructors, B-232928.2, Feb. 2, 1989, 68 Comp. Gen. _____, 89-1 CPD ¶ 108.

The contracting agency next claims that Inter-Con's first protest should be dismissed pursuant to 4 C.F.R. § 21.2(a)(1) because it is untimely. The agency correctly states that a protest that is based upon alleged improprieties in a solicitation must be filed with our Office not later than the closing date for receipt of proposals. That is, to be timely filed in our Office, the protester was required to file prior to the April 17 closing date for receipt of proposals.

Inter-Con's first four allegations of its first protest, concerning the failure to synopsize the procurement in the CBD and the inclusion of three allegedly improper clauses in the solicitation, were all apparent from the face of the solicitation and in fact known to the protester, since he states they were discussed during a March 14 meeting with the agency. Inter-Con asserts its protest was timely, since it "protested" these issues with the contracting agency at the March 14 meeting and that therefore the time period for protest in our Office was extended until 10 working days after initial adverse agency action, here, the closing date for receipt of proposals.

We disagree. While an agency-level protest will toll the filing period in this office, it must be in writing to constitute protest. Riverside Research Inst., B-234844, Mar. 31, 1989, 89-1 CPD ¶ 340. There is no indication that Inter-Con filed a written protest with the contracting activity any time prior to the April 17 closing date; rather, Inter-Con waited until after it had submitted a proposal to file a protest with our Office. Consequently, we dismiss these bases of protest since they were untimely filed.^{1/}

The only timely issue raised in Inter-Con's first protest is the alleged conflict of interest. Inter-Con claims that one of the competitors in the procurement was represented by a U.S. Marine corporal who used his position not only to obtain the contract but also to recruit Inter-Con's employees for the firm he represents. This contention is based upon the fact that the Marine Corps guard attended a pre-bid meeting. However, the record shows that the guard was informed that he was not permitted to participate in the procurement. After he was so notified, there is no indication that he was employed by or represented any offeror, including the awardee. Indeed, after his release from active duty the named guard returned to the United States and his whereabouts are unknown. Therefore, we cannot agree with Inter-Con that there was any conflict of interest which tainted this procurement.

^{1/} With respect to the alleged failure of the Department of State to publish a synopsis of the procurement in the CBD, even if the issue were timely raised this protest issue would be denied because it is clear that Inter-Con was not prejudiced by this alleged failure due to the fact that it not only received the solicitation but also submitted a proposal.

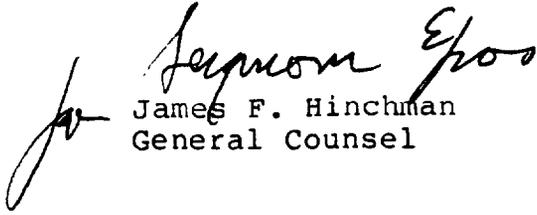
Inter-Con's second protest concerns its rejection from the competitive range. The protester argues that the agency's technical evaluation of Inter-Con's proposal was faulty in that it ignored the fact that Inter-Con was the contractor currently providing the same services required by the solicitation.

The record shows that the Department of State eliminated Inter-Con's proposal from the competitive range because it was seriously deficient in a number of areas. Specifically, the technical evaluation panel found Inter-Con's proposal failed to include a payment procedure, a firearms inventory program, an organization chart, a training program, the resumes of key personnel, and a detailed procedure on how the contract would be performed. Thus, Inter-Con's proposal was rated eighth out of the 11 offerors with a score of 62 out of the possible 100 points.

While the protester admits that these items were not in its proposal, it maintains that these deficiencies are informational in nature and easily could be ascertained by examining the current performance of Inter-Con and by conducting discussions.

The burden is on the offeror to submit an adequately written proposal from the outset. IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380. Where a proposal fails to include technical information that is called for by the solicitation and is necessary to establish compliance with the specifications, there is a reasonable basis to find the proposal technically unacceptable. Id. An agency's technical evaluation is dependent upon the information furnished in the proposal and a blanket promise to comply with all of the specification requirements is insufficient. DOD Contracts, Inc., B-224212, Dec. 8, 1986, 86-2 CPD ¶ 653. Since the RFP clearly sought a detailed technical response, we find that Inter-Con's apparent reliance on its experience and status as an incumbent to be misplaced. There is no legal basis for favoring a firm with presumptions on the basis of the offeror's prior performance; rather, all offerors must demonstrate their capabilities in their proposals. Intelcom Support Servs., Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487. Accordingly, we find that the Department of State reasonably found Inter-Con's proposal so informationally deficient that a virtually new proposal

would be necessary to make it acceptable. Consequently, Inter-Con was reasonably eliminated from the competitive range. Id.

 James F. Hinchman
General Counsel