



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Synergistic Dynamics, Inc.

File: B-237465

Date: February 26, 1990

John C. Snedeker, for the protester.

Joel D. Gonia, for the interested party, Allied Diversified Services, Inc.; Ann Marie Armstrong, for the interested party, Mid-State Realty.

Janet R. Hall, United States Marshals Service, for the agency.

Paula A. Williams, Esq. and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's objections to various alleged deficiencies in a solicitation which were apparent from the face of the solicitation prior to the time for receipt of initial proposals are dismissed as untimely since protest was not filed until after subsequent request for best and final offers was made.

2. Fact that solicitation amendment transmitting wage determinations and certain changes to solicitation provisions was received immediately after, and not before, telephonic discussions were conducted provides no basis for disturbing procurement where contents of amendment would not have been the subject of discussions in any event and where amendment was received 1 week before best and final offers were due.

DECISION

Synergistic Dynamics, Inc. (SDI), protests the terms and conditions of request for proposals (RFP) No. USM-JH-89-R-207-C-027 issued by the United States Marshals Service (USMS), Department of Justice, for certain real estate services within the State of Georgia. We deny the protest in part and dismiss it in part.

The intent of this acquisition is to obtain commercially available real estate services at rates based on established

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market prices to assist the USMS in performing its responsibilities under the Comprehensive Forfeiture Act of 1984, Pub. L. No. 98-473, § 301, 18 U.S.C. § 1963 (1988).

The solicitation requires potential offerors to submit offers to perform appraisal, property management and disposal services by auction, sealed bid or sale of government seized and forfeited real property located within three federal judicial districts in the State of Georgia. Offerors were given the option to submit proposals for one or more districts. The solicitation stated that the resulting contract was subject to wage determinations issued by the Department of Labor (DOL) pursuant to the Service Contract Act of 1965, as amended, 41 U.S.C. § 351 et seq. (1982).

The solicitation, issued on March 13, 1989, was amended four times. The first two amendments simply extended from April 24 to July 5 the time for receipt of initial proposals. On June 13, the USMS issued amendment No. 3, which further extended the due date by another month to July 14. This amendment made substantive changes to the solicitation, including the pricing schedule, the statement of work and the evaluation criteria. Also forwarded with amendment No. 3 was the transcript of the preproposal conference, in which the protester had participated and which had resulted in a number of changes to the RFP. Proposals were received as scheduled by July 14 and evaluated.

On October 11, the USMS sent SDI by Express Mail a letter transmitting amendment No. 4 and advising it that best and final offers (BAFOs) would be due on October 20. The bulk of amendment No. 4 consisted of DOL wage determinations. In addition, the amendment made minor changes to the pricing schedule and added certain labor provisions and procurement integrity clauses.

On the morning of the next day, October 12, the contracting officer conducted telephonic discussions with SDI. During that conversation, the contracting officer advised SDI that the amendment package was on the way and of its general contents. SDI states it received the package a few hours later. On October 17, 3 days before BAFOs were due, SDI filed this protest with our Office.

SDI has raised six issues, all of which concern alleged improprieties in the solicitation. For the reasons stated, we conclude that most of these allegations are untimely and therefore are dismissed and the balance are without merit and are denied.

The protester has argued the following:

- (1) the solicitation was incomplete when issued;
- (2) the contract is impossible to perform because although it requires services to be provided in a short response time over a large geographical area, it does not provide a separate line item for compensating the contractor for its program management/contract administration duties;
- (3) the RFP's pricing schedule is defective because there are no specific line items for certain services and other services require a more detailed line item breakdown than is provided;
- (4) the minimum guaranteed quantities are defective and are not even enough to cover the contractor's up-front costs;
- (5) no DOL wage determinations were provided until amendment No. 4, which was not received until discussions had been concluded; and
- (6) through amendment No. 4, there were changes incorporated into the RFP after discussions had been concluded.

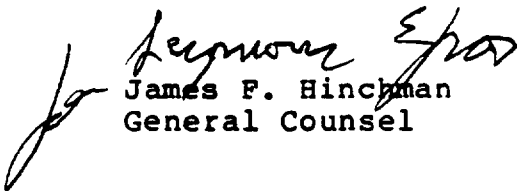
Under our Bid Protest Regulations, a protest based upon alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to that closing date. If the alleged improprieties do not exist in the initial solicitation, but are subsequently incorporated into it, the protest must be filed no later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1989). Measured by this standard, SDI's first four bases of protest are untimely.

As we noted above, the first three amendments to the solicitation extended the due date for receipt of initial proposals from April 24 to July 14. The last of these three amendments made extensive changes to the solicitation. In effect the basic format and content of the solicitation was in place with the issuance of amendment No. 3 a month before initial proposals were due on July 14. The alleged

improprieties of which SDI complains in its first four bases of protest--such as, for example, the deficiencies it perceives in the pricing schedule (which SDI states is its "overriding concern")--were apparent prior to the July 14 closing date and should have been protested by then. Since these issues were not raised until October 17, well past the closing date for receipt of initial proposals, they are untimely and will not be considered on the merits.

SDI's remaining contentions concern the content and timing of amendment No. 4. Since SDI's protest in this regard was filed before the next closing date for receipt of proposals following this amendment, we will consider these issues on the merits. SDI essentially objects to the fact that lengthy DOL wage determinations and certain changes to the solicitation transmitted by amendment No. 4 were received after, and not before, telephonic discussions were concluded. We do not think this circumstance provides a basis for sustaining SDI's protest. The protester has not shown any competitive prejudice to itself or other offerors who were similarly situated occasioned by receipt of the amendment after discussions but a full week before BAFOS were due since, as the agency points out, wage determinations are not subject to negotiations. We also find no support for the protester's related ground of protest that USMS imposed "burdensome" changes and additions after discussions were completed. Our review of amendment No. 4 indicates that the changes contained therein are, as noted previously, the wage determinations, the procurement integrity clauses and a few other minor changes. We fail to see how the issuance of this amendment after discussions were completed but in advance of the due date for BAFOS constitutes "gross violation" of applicable procurement regulations.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel