



Comptroller General
of the United States

Washington, D.C. 20548

S. McAuliffe

Decision

Matter of: Electronic Systems USA, Inc.

File: B-241254

Date: January 16, 1991

David A. Wibbels for the protester.
Stephen M. Bowen, for Honeywell, Inc., an interested party.
Lester Edelman, Esq., Department of the Army, for the agency.
Susan K. McAuliffe, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest contention that agency's specifications for maintenance of security and fire alarm systems are unduly restrictive is dismissed as untimely when not filed prior to the time for receipt of initial proposals, since the alleged improprieties were apparent from the face of the solicitation.
2. Protest basis challenging initial evaluation of proposal and award is dismissed as academic where agency determined procurement was defective and initiated appropriate corrective action.
3. Protest of alleged auction created by agency's disclosure of protester's prices to competitor to equalize competition must be filed within 10 working days after basis of protest known to be considered timely.

DECISION

Electronic Systems USA, Inc. protests the award of a contract to Honeywell, Inc. under request for proposals (RFP) No. DACA76-90-R-0010, issued by the Army Corps of Engineers, Engineer Topographic Laboratories, Fort Belvoir, Virginia. Electronic Systems principally contends that the RFP's evaluation factors for award are unduly restrictive and that the agency failed to properly evaluate proposals.

We dismiss the protest.

The RFP was issued by the agency on April 25, 1990, for preventive maintenance, emergency service and training for the Honeywell Delta 1000 security alarm system and the Honeywell

FS90 fire alarm system. The agency, knowing of no other source, had originally contemplated a sole-source award to Honeywell for these services, but revised its specifications to allow for a competitive procurement after two firms objected to the earlier proposed sole-source award. Offerors were to provide technical and cost proposals for a 4-month base period and four 1-year option periods. The RFP provided three technical evaluation factors for award: (1) personnel qualifications; (2) offeror's experience and technical capability; and (3) security. The first two factors were weighted equally, and the third factor was of lesser importance. To demonstrate experience and technical capability, offerors were instructed to produce physical evidence that they possessed any necessary technical manuals and parts held proprietary to Honeywell. Offerors were advised that price would not be scored but would be evaluated for reasonableness and cost realism.

Two offerors, Electronic Systems and Honeywell, submitted proposals by the May 25 closing date. Discussions were conducted with both firms in late June. By letter of August 1, the protester was notified that its proposal was excluded from the competitive range due to training deficiencies and the protester's failure to provide evidence of having the required manuals, checkout and test procedures, and the ability to obtain approved parts. An award was made to Honeywell on August 1.

By letter of August 9, Electronic Systems filed an agency-level protest challenging the agency's competitive range determination. A debriefing was conducted by telephone on August 22. While reviewing Electronic System's protest, the contracting officer discovered several irregularities that had occurred during the procurement. She discovered that the protester was not informed during discussions of its failure to provide evidence of checkout and test procedures, that best and final offers (BAFOs) had never been requested, and that the original evaluation score sheets were not saved or reviewed by the contracting officer. In an effort to correct these procurement deficiencies, the contracting officer issued a stop-work order on Honeywell's contract and reopened discussions with both offerors. The agency disclosed Electronic Systems' price to Honeywell since the protester knew Honeywell's price. By letter of September 14, the protester was requested to provide more specific information and documentation about its proposed training, its source for approved replacement parts, whether its price, which appeared low, included parts, and whether Electronic Systems possessed or was aware of Honeywell proprietary technical manuals. The agency also requested additional references which could verify the protester's past performance and maintenance experience on similar service contracts. The closing date for the receipt

of BAFOs was set for September 21. On that date, Honeywell submitted its BAFO. Electronic Systems did not submit a BAFO but instead filed a protest with our Office.

The protester challenges the award to Honeywell and claims that the RFP's specifications, particularly the stated evaluation factors for award, are restrictive and noncompetitive.

To the extent Electronic Systems is alleging that the RFP's evaluation factors for award are unduly restrictive, this aspect of the protest is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), a protest based on alleged improprieties in a solicitation, such as unduly restrictive specifications, which are apparent prior to the time for receipt of initial proposals, must be filed before that time. UNARCO Material Handling, B-239911, July 9, 1990, 90-2 CPD ¶ 23. Electronic Systems failed to protest these specifications until September 21, approximately 4 months after the May 25 closing date for the receipt of initial proposals. Accordingly, this protest contention will not be considered on the merits. See Community Metal Prods. Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41.

Regarding Electronic Systems' challenge of the award to Honeywell because of an allegedly flawed evaluation of initial proposals, we dismiss this basis of protest as academic since the agency admitted the deficiencies in its evaluation and award and initiated corrective action to remedy those deficiencies. We see no useful purpose that would be served by further consideration of this contention. See Hawthorne Power Systems, B-238447, May 8, 1990, 90-1 CPD ¶ 459.

The protester also challenges the propriety of the agency's release of Electronic Systems' proposed price to Honeywell, which the protester claims constitutes an improper auction. The protester was notified by the agency of this basis of protest on September 4, but it did not file its protest until September 21. Protests based on other than alleged improprieties in a solicitation must be filed not later than 10 working days after the basis is known. 4 C.F.R. § 21.2(a)(2). The protester failed to do so, and we dismiss this protest ground as untimely.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel