



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Krystal Gas Marketing Company

File: B-243868

Date: May 10, 1991

J. Abel Godines for the protester.
Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly applied evaluation preference to proposals is dismissed as untimely where allegation essentially constitutes challenge to solicitation evaluation scheme.

DECISION

Krystal Gas Marketing Company protests the award of a contract to Bishop Pipeline Company under request for proposals (RFP) No. DLA600-91-R-0154, issued by the Defense Fuel Supply Center for natural gas. Krystal, a small disadvantaged business (SDB), alleges that the agency improperly applied the RFP's 10 percent evaluation preference.


We dismiss the protest.

According to Krystal, the RFP required offerors to quote both an "index price" and an "adjustment factor" or mark-up price for each contract line item. The index price is the same for all bidders; therefore, the RFP provided that offers would be evaluated based on the adjustment factor. Award was to be made "to the responsible offeror whose proposal offers the lowest total adjustment factor amount for the total line item quantity." The RFP also stated that a factor of 10 percent would be added to the evaluated prices of offerors that are not SDB concerns "after all other evaluation factors described in this solicitation are applied." Krystal argues that the agency improperly applied the 10 percent evaluation factor only to Bishop's adjustment factor and not to Bishop's total price (index price plus adjustment factor), and asserts that if the agency had calculated the 10 percent evaluation factor based on Bishop's total price, Bishop's evaluated price would have been higher than Krystal's.

Under our Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of a solicitation must be filed by the time designated for bid opening. 4 C.F.R. § 21.2(a)(1) (1991). While Krystal characterizes its protest as a challenge to the agency's application of the SDB evaluation preference, in fact, it essentially is challenging the solicitation's evaluation scheme, which clearly called for evaluation--and, therefore, application of the evaluation preference--based on the adjustment factor. As Krystal did not protest this alleged defect in the RFP until after award, the protest is untimely.

Krystal also asserts that the agency failed to comply with its own policy directives in its application of the evaluation preference. It is well-established, however, that agency directives lack the force and effect of law, so that the alleged failure to comply with them in a particular instance involves a matter for consideration within the agency itself, rather than through the bid protest process. Spectron Caribe, Inc., B-224251, Nov. 25, 1986, 86-2 CPD ¶ 609.

The protest is dismissed.


John M. Melody
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