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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Brinkerhoff Realty and Construction

File: B-244544

Date: September 27, 1991

James T. Brinkerhoff and Timothy H. Power, Esq., for the protester.

Sherry Kinland Kaswell, Esq., Department of the Interior, for the Agency.

James M. Cunningham, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency should have rejected awardee's offer for lease of office space because it failed to meet solicitation requirement for "good access" to specified highways is dismissed as untimely due to protester's failure to diligently pursue the information on which its protest is based.

2. Protest that solicitation should have required successful offeror to perform off-site improvements benefitting property offered to be leased is untimely since alleged defect was apparent prior to submission of offers.

3. Protest that agency waived the construction schedule after contract award raises matter of contract administration not for consideration by the General Accounting Office.

DECISION

Brinkerhoff Realty and Construction (BRC) protests the award of a lease for office space in Safford, Arizona, by the Bureau of Land Management (BLM), Department of the Interior, to Paige Associates, Ltd., under solicitation for offers (SFO) No. YA-651-LSO-90007. BRC contends that Paige's offer should have been rejected as nonresponsive and that BLM's conduct of the procurement was otherwise improper.

We dismiss the protest.

In July, 1990, BLM issued the solicitation seeking office space for BLM operations in Safford, Arizona. The SFC specifically provided that the office space offered must be "located in the area bounded by the city limits of Safford, Arizona, south of the Gila River with good access to highway 70 or highway 66."

On September 3, 1990, offers were submitted by BRC, Paige, and two other offerors. Following discussions, best and final offers (BAFOs) were submitted on November 26, 1990. On November 30, BLM awarded a contract to Paige on the basis that Paige had offered the "lowest evaluated price per square foot which fully meets the RFP requirements." By letter of that day, BRC was advised it had not been selected for award. By letter dated December 17, 1990, BRC was specifically informed that the contract had been awarded to Paige.

On June 20, 1991, BRC filed a protest with our Office arguing that Paige's offer should have been rejected for failing to meet the requirements of the solicitation. Specifically, BRC asserted that Paige's offer failed to meet the requirement that there be "good access" to highway 70 or highway 66 from the proposed site. BRC maintains that its protest is based on a letter written by the BLM District Manager on February 4, 1991, which BRC asserts it obtained on June 11, 1991.^{1/} After filing its protest, BRC submitted a request for documents from BLM under the Freedom of Information Act (FOIA).

Our Bid Protest Regulations provide that protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). A protester is obligated to seek information regarding potential bases for protest within a reasonable time after an agency's adverse action, and failure to do so will render its protest untimely. See J&J Maintenance, Inc., B-223355.2, Aug. 24, 1987, 87-2 CPD ¶ 197 (protest untimely where protester waited more than 7 weeks after cancellation of solicitation to make FOIA request); National Council of Senior Citizens, Inc., B-196723, Feb. 1, 1980, 80-1 CPD ¶ 87 (protest untimely where protester waited more than 5 weeks after proposal was rejected to make FOIA request).

^{1/} The letter referred to the fact that the City of Safford was planning to pave a street adjacent to the site Paige proposed. Paving of this street would provide a shorter access route to highway 70 than currently existed. At the time the contract was awarded, Paige's site was approximately 1 mile from highway 70 via existing roads. Paving of the road adjacent to Paige's proposed site would provide a shorter route to highway 70.

Here, BRC should have been aware of the location of the proposed site and the access to the specified highways several months before filing its protest. Nonetheless, BRC failed to affirmatively pursue its protest until six months after it was notified of the contract award. On the basis of these facts, we conclude that BRC failed to diligently pursue information regarding its basis for protest and dismiss its protest as untimely. In any event, we note that since the site proposed by Paige is approximately 1 mile from highway 70 via existing roads, the contracting officer's determination that Paige's offer met the "good access" requirement of the solicitation was reasonable irrespective of the status of a possible second access route.

BRC also argues that the contract awarded to Paige was "conditional and therefore unenforceable." Among other things, BRC asserts that the contract with Paige was conditioned on pavement by the City of Safford of the road adjacent to Paige's proposed site.^{2/} We have reviewed the lease executed between BLM and find no contingencies.

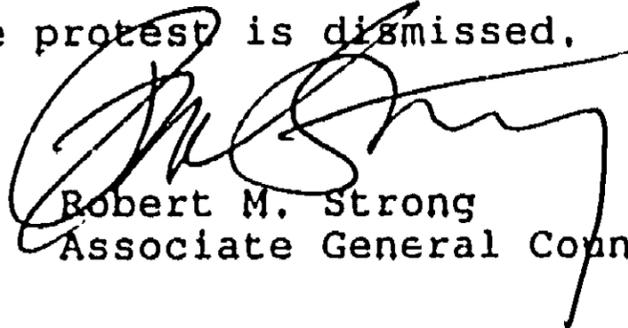
After receiving the administrative report, BRC protested that the solicitation should have required the successful offeror to perform off-site improvements for the property proposed. Our Bid Protest Regulations provide that protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of offers must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Accordingly, this portion of BRC's protest is untimely since the absence of the solicitation requirement BRC asserts should have been included was clearly apparent prior to the time set for receipt of offers.

Following its receipt of the administrative report, BRC also complained that BLM altered the construction schedule for Paige after the contract was awarded. Our Bid Protest Regulations provide that the administration of an existing contract is within the discretion of the contracting agency and not for consideration by our Office. 4 C.F.R. § 21.3(m)(1), as amended by 56 Fed. Reg. 3759 (1991). Since BLM's alleged alteration of the construction schedule is a matter of contract administration, it is not for our consideration.

^{2/} By letter dated June 29, 1990, the City of Safford had advised BLM that it intended to pave the road adjacent to the property offered by Paige.

Finally, BRC raises various matters regarding Paige's allegedly improper actions and misrepresentations in connection with its offer. BRC first raised these issues by letters dated August 5 and 22, 1991--nearly 9 months after the contract was awarded--asserting that these allegations are based on documents it recently requested from the agency. For the reasons discussed above, we view these allegations as untimely due to BRC's failure to diligently pursue its alleged bases for protest. See J&J Maintenance, Inc., supra.

The protest is dismissed.



Robert M. Strong
Associate General Counsel