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

Decision

Matter of: Tero Tek International, Inc.
File: B-242743.3
Date: October 3, 1991

A.N. Mackenzie-Graham for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest by the original awardee of corrective action taken by agency in response to protest of initial award which results in new award to another firm is untimely, when filed more than 10 working days after notice of corrective action.

DECISION

Tero Tek International, Inc. (TTI) protests the action of the Department of the Army in terminating for the convenience of the government a contract awarded to TTI under request for proposals (RFP) No. DABT02-90-R-0001, and the subsequent award of a contract to K&M Maintenance Services, Inc.

We dismiss the protest as untimely.

The RFP was initially issued July 18, 1990, as a total small business set-aside to furnish services, materials, supervision, and labor to perform supply, storage, warehousing, vehicle and equipment maintenance, and transportation services for the Directorate of Logistics at Fort McClellan, Alabama. The Army, on January 22, 1991, awarded a contract to TTI. On January 25, K&M protested this award to our Office on the grounds that improper discussions had occurred between the agency and TTI.^{1/}

^{1/} K&M also challenged TTI's status as a small business to the San Francisco Regional Office of the Small Business Administration.

In response to the protest, the Army decided to reopen discussions with all offerors in the competitive range, and give them an opportunity to revise their proposals and submit new BAFOs. The Army further provided that it would evaluate the BAFOs and in the event an offeror other than TTI was selected, TTI's contract would be terminated for convenience and an award would be made to the new selectee. Consequently, on March 4, our Office dismissed the protest as academic.

By letter dated April 1, the Army advised all competitive range offerors of the corrective action it was taking, and on May 15 received revised proposals from both TTI and K&M. The Army evaluated the revised proposals and, on August 30, the Army awarded a contract to K&M and terminated TTI's contract for the convenience of the government.

On September 9, TTI protested to our Office that the termination of its contract was improper because the original contract was not terminated immediately and the initial contract price was not taken into consideration in the subsequent evaluation. TTI also argued that it was prejudiced by the disclosure of its contract price after the initial award to TTI.

TTI basically challenges the agency's corrective action. ITT's underlying allegations that its initial award was proper and that the agency's corrective action adversely affected the firm are untimely. Our Bid Protest Regulations require protests to be filed no 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).

TTI argues that its protest is timely because there was nothing for it to protest until its contract was actually terminated and another offeror was selected for award. We do not agree. First, TTI objects to the Army's decision not to terminate its contract until after the Army had evaluated the second round of BAFOs and determined that another offeror should be selected for award. The Army's plans in this regard was specifically detailed in the April 1 letter. TTI knew or should have known that the Army intended to continue its contract award until a new award determination was made. It also knew or should have known that its price under the initial award had been disclosed to unsuccessful offerors in the original notice of award. Instead of protesting the corrective action as adverse to the firm, TTI participated in

the competition. TTI is untimely to challenge the agency's corrective action 4 months after the corrective action was initiated, and only after it lost the competition.

The protest is dismissed.

Michael R. Golden
Michael R. Golden
Assistant General Counsel