



Comptroller General
of the United States

Washington, D.C. 20548

Golden
145737

Decision

Matter of: Westinghouse Electric Corporation

File: B-245424

Date: September 9, 1991

Robert N. Leerberg for the protester.

DIGEST

1. Award of all lots to one firm, notwithstanding that protester submitted low price for one lot, is permissible where solicitation award methodology permitted award on the basis of such an offer.
2. Protest of solicitation award methodology filed after award is untimely.

DECISION

Westinghouse Electric Corporation protests an award under request for proposals (RFP) No. N00024-91-R-4014, for electronic trip units and circuit breakers, issued by the Department of the Navy. Westinghouse argues that the RFP award methodology was not structured to permit full and open competition. Westinghouse requests that the award be terminated and the requirement be resolicited after revising the award methodology.

We dismiss the protest.

Westinghouse advises that the RFP called for electronic trip units to be incorporated into circuit breakers produced to military specifications. Design and tooling costs of developing a circuit breaker to military specifications would be prohibitive. Thus, only firms that currently manufacture circuit breakers to military specifications effectively could compete. The RFP originally provided for award of each of four lots individually. By amendment, the Navy included, as an alternative, for award based on pricing of the lots together. Westinghouse apparently could only

offer on lot 1 and part of lot 2 based on its current available circuit breakers. By letter of March 4, Westinghouse requested that the solicitation be revised to allow offers on lots 1 and 2 together because Westinghouse believed it could offer a lower price for these two lots combined, rather than pricing the two lots separately. Westinghouse also requested that it be allowed to submit on partial lot quantities or that lot 2 which called for trip units for two circuit breakers be divided into separate lots. Westinghouse also requested that the Navy consider offers predicated on receiving award for more than one, but not all lots. By letter of March 11, the Navy declined to revise the solicitation further and explained its reasons for rejecting Westinghouse's requests.

Westinghouse proposed on lots 1 and 2 only. SPD Technologies, Inc., the awardee, priced all four lots individually and submitted prices approximately 50 percent lower than the individual lot prices if award was made on all four lots together. Although Westinghouse was lower than the awardee for lot 1, SPD, the only other offeror, received the award.

Westinghouse basically complains that, by permitting offers predicated on receiving an award for all lots, it was virtually impossible for Westinghouse to win an award for a single lot. The amended RFP clearly provided, as an alternative, that offers could be based on award for all lots combined. The Navy's award to SPD at SPD's price for all lots combined was therefore in accordance with the RFP award scheme.

Westinghouse's argument that the RFP award scheme was defective is untimely. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

The award language revision was incorporated into the RFP by amendment. Westinghouse's protest submissions show that the firm was aware that this revision adversely affected its competitive standing. The protester in fact requested that the award language be modified to allow Westinghouse a better

opportunity to obtain an award. This request was denied prior to the closing time. Westinghouse did not protest the amendment until after award. Thus, its protest of this issue is untimely.

We dismiss the protest.

Arthur T. Pogany
for Michael R. Golden
Assistant General Counsel