



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contact International Corporation--
Reconsideration

File: B-246937.2

Date: February 5, 1992

David A. Sharp for the protester.
Guy R. Petrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. When a protest appears untimely on its face and is dismissed for that reason, a protester will not be permitted to introduce for the first time, in a reconsideration request, facts and information establishing its timeliness where the facts and information were in the protester's possession but were not initially provided to our Office.

2. In a negotiated procurement for a fixed-price, combined indefinite quantity and requirements, contract, a procuring agency is not required to conduct a cost analysis simply because the solicitation required cost and pricing data, where adequate price competition was obtained and the solicitation does not provide for a cost realism analysis.

DECISION

Contact International Corporation requests reconsideration of our decision in Contact Int'l Corp., B-246937, Dec. 20, 1991, 91-2 CPD ¶ ___, in which we dismissed Contact's protest of the award of a contract to Dairy Maid Dairy, Inc. (DMD) under request for proposals (RFP) No. DAJB03-91-R-3216, issued by the Department of the Army for dairy operation and maintenance services of a government-owned plant at Songnam, Republic of Korea. Contact protested that the RFP did not state sufficient information to allow offerors to compete on an equal basis and that the Army did not perform a cost analysis of DMD's allegedly below-cost proposal.

We affirm the dismissal of Contact's protest.

The RFP contemplated the award of a fixed-price, combined indefinite-quantity and requirements, contract for dairy operation and maintenance services, and provided estimated minimum and maximum quantities for the indefinite quantity

items and estimated quantities for the "requirements" items. Offerors were required to provide fixed unit price offers for the estimated quantities and to submit cost and pricing data. The RFP requested technical proposals that addressed the offeror's management capability, contract performance plan and company experience, and provided that award would be made to the low-priced, technically acceptable offeror. The RFP did not provide for consideration of cost factors or require a cost realism analysis in the technical evaluation.

Of the three proposals received in response to the RFP, DMD was the low-priced, technically acceptable offeror, and award was made to that firm on December 4, 1991. Contact, the incumbent contractor, protested on December 13.

In Contact Int'l Corp., supra, we dismissed Contact's post-award protest allegation that the RFP failed to provide sufficient information to allow offerors to compete on an equal basis because it was an untimely protest of an apparent solicitation impropriety, which was not protested by the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1), as amended by 56 Fed. Reg. 3759 (1991). We also dismissed Contact's objection that the Army failed to perform a cost analysis of DMD's low-priced offer because we found that, even though the RFP requested cost and pricing data, the agency had no obligation to perform a cost analysis where the RFP did not require a cost realism analysis and adequate price competition was received. See Research Mgmt. Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352.

In requesting reconsideration of our dismissal of its allegation that the RFP failed to provide sufficient information, Contact asserts that the 10-day rule of 4 C.F.R. § 21.2(a)(2) should apply here rather than the rule governing protests of solicitation defects. It states that the agency issued several amendments to the RFP releasing information to the offerors, and that it was not until November 22 when it learned that no further such amendments would be issued, even though it had advised the agency that sufficient information still had not been released to the offerors. Therefore, Contact asserts that its December 9 post-award protest is timely because it was filed within 10 working days of November 22.

Our Bid Protest Regulations provide that a protester has an obligation to provide information establishing the timeliness of its protest when on its face the protest otherwise appears untimely. 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.2(b)). In other words, when a protest appears untimely on its face and is dismissed for this reason, a protester will not be permitted to introduce for the first time, in a reconsideration request, facts and

information establishing its timeliness where the facts and information were in the protester's possession and could have been provided to our Office when the protest was filed. Management Eng'g Assocs. --Recon., B-245284.2, Oct. 1, 1991, 91-2 CPD ¶ 276. That is what Contact seeks to do here. Contact's protest appeared untimely on its face and Contact could have, but did not, provide in its protest the information it believes makes its protest timely; therefore, we decline to consider this aspect of Contact's request.

Contact also argues that we erred in finding that the agency was not required to perform a cost analysis of the cost elements comprising DMD's proposal because the RFP required the submission of cost and pricing data. Contact does not, however, disagree with our finding that adequate price competition was obtained.

While Contact disagrees with our decision, it does not show it is in error. As pointed out by Contact, Federal Acquisition Regulation §§ 15.805-2 and 15.805-3 require that, in evaluating proposals, agencies must determine that proposed costs and prices are fair and reasonable. There are a number of techniques that may be used in reaching a determination of cost or price reasonableness, including a comparison of the offers received for consistency as well as a comparison with the government estimate. Servrite Int'l, Ltd., B-241942.3, June 13, 1991, 91-1 CPD ¶ 567. There is no requirement, however, that an agency perform a cost analysis merely because cost and pricing data are required by the solicitation. Research Mgmt. Corp., supra; see Contract Servs., Inc., B-232689, Jan. 23, 1989, 89-1 CPD ¶ 54. Since the Army obtained adequate price competition, and Contact does not contend otherwise or contend that the Army did not perform a price analysis,¹ we find no requirement that the Army perform a cost analysis of DMD's low fixed-price proposal.

The dismissal of Contact's protest is affirmed.


Ronald Berger
Associate General Counsel

¹Contact's protest objections concern DMD's labor calculations and rates, which are cost elements of the fixed prices in DMD's contract. The RFP schedule of services does not request labor pricing. Thus, Contact's objection is that a cost analysis needed to be performed.