



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Integrated Systems Group, Inc.

File: B-246446

Date: February 21, 1992

DECISION

Integrated Systems Group, Inc. (ISG) protests the Air Force's decision to place a delivery order (F49650-91-FB135) with Zenith Data Systems under its nonmandatory Federal Supply Schedule for various items of automatic data processing (ADP) equipment. ISG contends that since it submitted a technically acceptable proposal, at a lower price, the agency should have issued a competitive solicitation for the requirement.

We dismiss the protest.

On September 10, 1991, the Air Force published a notice in the Commerce Business Daily (CBD) announcing its intent to place an order against Zenith's ADP schedule for 32 each, personal computers, disk drives, and monitors, and 5 modems. The CBD notice advised prospective offerors to submit technical capabilities and pricing information within 15 days of the notice's publication. It also advised that all responses from responsible sources would be fully considered to determine whether to issue a solicitation. The notice stated that the items were required no later than September 30, 1991.

Although ISG asserts that it prepared a proposal and sent it by telefacsimile (FAX) to the Air Force on September 25, the Air Force states that no response from ISG was among the four it received. The agency reviewed the responses received and found that none met the agency's minimum technical requirements. Accordingly, the Air Force decided not to issue a solicitation and placed the delivery order with Zenith on September 28. On October 24, ISG inquired about the status of the procurement, and upon learning of the agency's decision, filed this protest with our Office.

ISG argues that the Air Force improperly awarded a sole-source delivery order to Zenith because ISG's proposal offered conforming ADP equipment at a price less than that on Zenith's schedule. However, we require a protester to submit a timely expression of interest responding to a CBD notice and to receive a negative agency response as prerequisites to filing a protest challenging an agency's sole-source decision. DCC Computers, Inc., May 29, 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514. This procedure gives the agency an opportunity to reconsider its sole-source decision in light of a serious offeror's preliminary proposal, while limiting challenges to the agency's sole-source decision to diligent potential offerors. Id. Here, the agency states that it did not receive any expression of interest from ISG.

ISG's evidence that it sent a response by the closing date consists only of its own FAX record indicating that three pages were sent to the correct Air Force telephone number and that the transmission was "okay." While this may establish that something was sent to the Air Force on September 25, it does not establish the contents of the transmission. It is the responsibility of a bidder or offeror to ensure timely receipt of its proposal by a contracting agency. See Goodwin Contractors, B-228336, Dec. 17, 1987, 87-2 CPD ¶ 604. Here, the protester waited until the last day to send his response by FAX and made no effort to verify receipt until October 24. Accordingly, we find no convincing evidence that ISG provided a timely response to the CBD notice and, therefore, it is not an interested party to protest. DCC Computers, Inc., supra.¹

ISG also argues that if the agency had properly evaluated the other responses it received, it would have been required to issue a solicitation. However, ISG is not an interested party to raise the issue of the agency's evaluation of other offerors' responses. The other offerors, who have a more

¹ISG's protest also appears to be untimely. The CBD notice's statement that the items were required no later than September 30 made plain the agency's intent to award a contract by that date. A protester has the responsibility to diligently pursue information forming the grounds for a protest. Herman Miller, Inc., B-237550, Nov. 7, 1989, 89-2 CPD ¶ 445. Since ISG waited until October 24, more than 10 working days later to inquire about the procurement, its protest on October 28 would thus be untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991).

direct relationship with the issue, may properly protest it themselves. John F. Kenefick Photogrammetric Consultant, Inc., B-238384, May 4, 1990, 90-1 CPD ¶ 452.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul I. Lieberman", followed by a horizontal line.

Paul I. Lieberman
Assistant General Counsel