



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

Decision

Matter of: World Access, Inc.

File: B-245571.4

Date: May 18, 1992

Scott A. Westfahl, Esq., Foley & Lardner, for the protester.
Robert S. Sonenthal, Esq., Agency for International
Development, for the agency.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reimbursement of costs incurred in filing
challenge to elimination of protester's proposal from the
competitive range on ground that contracting officer failed
to timely notify protester of its elimination is denied
where there was no timely protest of the failure to notify
and protester suffered no prejudice from the delayed
notification.

DECISION

This decision is issued in response to the request of World
Access, Inc. that it be reimbursed its protest costs in
connection with request for proposals (RFP) No. W-MS-91-01,
issued by the Agency for International Development (AID) for
emergency medical evacuation services.

We deny the request for costs.

The solicitation was issued on October 12, 1990, and sought
offers for a 2-year base period and 3 option years; under
the RFP, offerors were to provide emergency medical evacua-
tion services to individuals employed abroad under AID-
financed contracts. The RFP called for the submission of
business and technical proposals. The solicitation provided
that technical factors were more important than cost; in
this regard, offerors were advised that contract award would
be made to the responsive, responsible contractor whose
proposal offered the best value to the government.

On the January 4, 1991, closing date, five offerors--
including World Access--submitted proposals. Each offeror's
technical proposal was then referred to an agency technical
evaluation panel (TEP) for review; World Access's technical

proposal was one of four determined "conditionally acceptable." On February 20, technical clarification questions were issued to each of these four offerors; on April 5, after reviewing the offerors' responses, a second set of technical clarifications was issued.

By memorandum dated May 9, the TEP provided the contracting officer with a final evaluation of each offeror's technical proposal. In the memorandum, the TEP summarized the strengths and weaknesses of each proposal and ranked each proposal in order of its technical merit.

After reviewing the TEP's analysis, the contracting officer apparently determined that the four proposals were technically equivalent. Accordingly, the contracting officer decided to determine the competitive range based on a comparison of each offeror's fixed price fees and escalation/deescalation formulas. As a result of this comparison, World Access's proposal was excluded from the competitive range.

By letter dated June 6, the contracting officer issued a request for best and final offers (BAFO) to the three remaining offerors. On the June 12 BAFO due date, the contracting officer determined that further clarification of each offeror's proposed escalation/deescalation formula was required; accordingly, on August 11, the contracting officer issued a second request for BAFOs.

On August 20, after reviewing each offeror's second BAFO, the contracting officer selected MEDEX Assistance for award. That same day, the contracting officer notified World Access and the two other offerors that their proposals had been excluded from the competitive range.

On September 18, World Access filed a protest with this Office, challenging the award to MEDEX. In its protest, World Access argued that the agency had improperly evaluated and selected MEDEX for award; World Access also alleged that the TEP's pricing terms were improper. On October 30, AID provided this Office with an agency report, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1992). On November 8, AID advised us that the agency had decided to reevaluate the four proposals which had been determined conditionally acceptable on January 4.

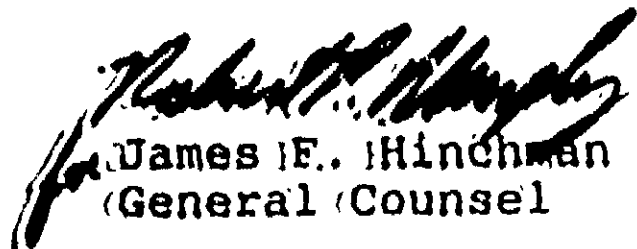
With regard to proposal pricing, offerors were to propose a fixed rate price for the first 2 years of contract performance and an escalation/deescalation formula from which to calculate rate adjustments for contract years 3, 4 and 5.

In response, by letter dated November 15, World Access withdrew its protest. However, in its letter World Access claimed that it is entitled to recover its protest costs because the contracting officer did not promptly notify the protester that its proposal was eliminated from the competitive range on June 6, as required by Federal Acquisition Regulation (FAR) § 15.609(c).² The company, citing SMS Data Prods. Group, Inc., (GSBCA No. 8589-P, 87-1 BOA ¶ 19,496, 1986 BPD ¶ 1206, asserts that "a contractor . . . not timely notified under FAR 15.609(c) . . . is entitled to recover the costs of filing and pursuing a bid protest. . . ."

We find no basis to award such costs here. First, in the cited case, the General Services Administration Board of Contract Appeals, in response to a specific protest assertion, found that the contracting officer's failure to timely eliminate a proposal that had no reasonable chance for award from the competitive range and to so promptly notify the offeror was contrary to FAR § 15.609(c) and misled the contractor into incurring further proposal preparation costs. Here, there was no protest of the agency's failure to timely notify World Access of the elimination of its proposal from the competitive range and, as indicated above, the agency has reconsidered its original competitive range determination.

Second, unlike in the SMS case, the lack of prompt notification by the contracting officer did not cause the protester to incur further proposal preparation costs; the record shows that World Access made no additional proposal submissions after June 6. Under these circumstances, even if we regard the protester's November 15 letter as timely raising the delayed notification as a protest issue, there is no basis for awarding World Access its costs. See Adams Corp. Solutions, IB-2A1097, Jan. 9, 1991, 91-1 CPD ¶ 124 (protest denied where delayed notification resulted in no prejudice to the protester's competitive position).

The request for costs is denied.


James E. Hinchman
General Counsel

²FAR § 15.609(c) provides:

"The contracting officer shall notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer being considered for selection."