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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American International Global

File: B-247896

Date: July 2, 1992

Jeffrey R. Heintzelman for the protester.
Jonathan Silverstone, Esq., and Robert Sonenthal, Esq.,
Agency for International Development, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest is dismissed as untimely where the protester failed to file its protest of an alleged solicitation impropriety prior to the closing date for receipt of best and final offers.

DECISION

American International Global protests the award of a contract to CIGNA Worldwide Companies under request for proposals (RFP) No. AID/W/CO-91-009, issued by the Agency for International Development for an insurance carrier which would provide workmen's compensation insurance for American employees of United States contractors performing overseas, foreign economic aid contracts. The protester essentially alleges that the agency failed to furnish sufficient information so that it could submit a competitive proposal.

We dismiss the protest.

The RFP, issued on September 30, 1991, contemplated the award of a fixed-price, 5-year requirements contract with escalation provisions. The RFP included "the best available" historical data consisting of the total dollar value of losses incurred for a specific number of claims filed under the prior contract for which CIGNA was the incumbent contractor. The RFP stated that price was the most important evaluation factor. The RFP provided that the award would be made to the offeror whose proposal was deemed most advantageous to the government.

The protester believed that because of CIGNA's status as the incumbent contractor and CIGNA's direct knowledge of all prior losses and risks, in the current procurement for the agency's follow-on requirements, CIGNA was in a more favorable competitive position. Therefore, prior to November 22, the amended closing date for receipt of initial proposals, the protester requested that the agency provide it with additional annual loss breakdown information. The agency responded that it had released in the RFP all available information.

Two firms--the protester and CIGNA--timely submitted initial proposals. The agency included each offeror's initial proposal in the competitive range. The agency subsequently conducted discussions with each offeror. During discussions, the protester stated its concern that CIGNA, as the incumbent contractor and because of its direct knowledge of prior losses and risks, enjoyed a significant competitive advantage. Under its prior 5-year contract, CIGNA was required to file semi-annual loss reports. The protester specifically requested that the agency release these reports. The protester believed that the information in these reports would enable it to submit a more competitive proposal. The protester requested that the agency provide these reports prior to its submission of its best and final offer (BAFO).

On January 13, the agency released to the protester additional loss information under the prior contract in the form of automated loss run statements and an insurance broker's loss run statement. The loss information included dates of accidents, causes of losses, and payments for losses. On January 14, prior to submitting its BAFO, the protester requested that the agency clarify the causes of three losses shown as being greater than \$50,000 each. On January 15, the agency responded that it had provided the best available information.

In its BAFO, submitted by the amended closing date of January 21, the protester affirmed its initial proposal and repeated its concern that it was at a competitive disadvantage because it had not received CIGNA's prior loss and risk experience as reflected in its semi-annual loss reports. By letter dated January 30, the agency reopened discussions and released, as reported by CIGNA, a two-page loss experience summary. The summary showed dates of accidents, descriptions of losses, and claim payments. The summary specifically included, as requested by the protester, a description of the losses which were greater than \$50,000 each. In its letter, the agency also requested the submission of a second BAFO by February 14. On February 13, the protester submitted its second BAFO, affirming its initial proposal and its initial BAFO.

On March 5, because CIGNA submitted the lowest evaluated premium schedule, the agency awarded CIGNA a contract as the most advantageous offeror. On March 11, the protester filed this protest.

The protester argues that it was at a competitive disadvantage because the agency did not provide it with CIGNA's semi-annual loss reports. The protester acknowledges that it received information regarding CIGNA's losses and risks under the prior contract. However, the protester argues that this information was less than complete in that the nature of many of the claims was listed as unknown, contract names and numbers were missing, and outstanding claim reserves were not shown. The protester also argues that this information was not furnished in a semi-annual loss report format.

Here, we find that the protester's argument--that it was unable to prepare a competitive proposal because it received information which was incomplete and not in the proper format--constitutes a protest of an alleged solicitation impropriety. 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 date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1992). 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, or no later than the next closing date for receipt of BAFOs. Minact, Inc., B-237128.2, Nov. 9, 1989, 89-2 CPD ¶ 450.

The record shows that during discussions, the agency provided the protester with additional loss and risk information, although not in the form of semi-annual loss reports, based on CIGNA's prior experience. On January 30, the agency provided the protester with CIGNA's two-page loss experience summary. This summary included, as per the protester's request, a description of three losses which were greater than \$50,000 each. To the extent the protester believed it could not submit a competitive proposal because this final summary did not represent the best, most complete information available from the agency and was not described in a semi-annual loss report format, the protester should

have filed its protest prior to the February 14 closing date for receipt of second BAFOs. Since the protester waited to file this protest until after the award to CIGNA, its protest is untimely.¹

Accordingly, the protest is dismissed.

Michael R. Golden

Michael R. Golden
Assistant General Counsel

¹The record shows that over the 5-year period of performance under the prior contract, CIGNA never filed any semi-annual loss reports. The agency states, however, that under the follow-on contract, CIGNA will be required to file these reports