

Linder
148461



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

Decision

Matter of: Applied Remote Technology, Inc.
File: B-250475
Date: January 22, 1993

Robert C. Lynn, Esq., for the protester.
Elward Saul, Esq., Department of the Navy, for the agency.
Susan S. Linder, Esq., and Lynn H. Gibson, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency-level protest alleging failure to conduct meaningful price discussions is timely since protest was filed within 10 days after the debriefing at which protester learned of the basis for its protest.
2. Protest to General Accounting Office within 10 days from when the protester received formal agency denial of protest is timely, since there is a dispute concerning the agency action taken at an earlier meeting and doubts concerning timeliness of a protest are resolved in favor of the protester.
3. Where contracting agency did not consider protester's price to be too high for the scope of effort and technical approach proposed, agency was not required to conduct discussions on the price proposed by the protester.

DECISION

Applied Remote Technology, Inc. (ART) protests the award of a contract to General Systems Solutions (GSS) under request for proposals (RFP) No. N00019-90-R-0021 issued by the Naval Air Systems Command, Department of the Navy, for the A/N37U-1 Mine Clearing Set. ART contends that the Navy failed to conduct meaningful discussions on ART's price proposal because the Navy did not inform ART that its price was considered too high for the contract award.

We deny the protest.

On June 12, 1991, the Navy issued a solicitation for an A/N37U-1 Mine Clearing Set, which is a helicopter-towed,

mechanical underwater minesweeping system. The solicitation provided for the award of a firm-fixed-price contract to the offeror whose proposal represented the best value to the government, price and other factors considered. When the solicitation was issued it identified the following four principal evaluation criteria in descending order of importance: technical, price, schedule, and management. On July 22, 1991, the RFP was amended and the evaluation criteria were revised to reflect that price was the most important criterion.

Three firms submitted proposals, all of which were determined to be in the competitive range. In May 1992, the Navy conducted discussions with all three offerors, and in June the Navy requested them to submit best and final offers. On June 30, 1992, the Navy authorized the award to GSS, whose price was substantially less than that proposed by the protester. The Navy notified ART of the award to GSS by telephone on July 6, and provided ART written notice of the award by letter dated July 9.

On July 6, 1992, ART requested a debriefing conference which was held on July 15. ART submitted its protest to the Navy on July 29 and the parties met to discuss the protest on August 18. Following the Navy's formal denial of the protest in a letter to ART dated September 10, this protest was filed on September 23.

As an initial matter, the Navy argues that ART's protest is untimely since it did not protest to the agency within 10 days after the Navy's July 9 letter advising ART of the award to GSS and the award amount. We disagree. ART promptly requested and received a debriefing, on July 15, to obtain the Navy's explanation for its evaluation of ART's price proposal and the basis for the award selection. At this debriefing, ART first learned the basis for its allegations that the Navy considered ART's price too high and failed to conduct meaningful price discussions with ART. Since ART protested to the agency within 10 days after the debriefing, the protest is timely. 4 C.F.R. § 21.2(a)(2) (1992); PRC, Inc., B-247036, Apr. 27, 1992, 92-1 CPD ¶ 396.

Additionally, the Navy argues that ART's protest to GAO is untimely because it was filed more than 10 days after initial adverse agency action on the protest. See 4 C.F.R. § 21.2(a)(3). According to the Navy, it first took adverse action on ART's protest when it advised ART at the August 18 meeting that the Navy stood by its original decision to award the contract to GSS. However, ART claims that at the end of the meeting both parties agreed to defer final resolution of the protest pending ART's receipt of additional information from the Navy. Because neither party has produced conclusive evidence supporting its position,

and it is our practice to resolve doubts over the timeliness of a protest in the protester's favor, we consider the protest filed within 10 days after the formal agency denial to be timely. Kaysam Worldwide, Inc., B-247743, June 8, 1992, 92-1 CPD ¶ 500.

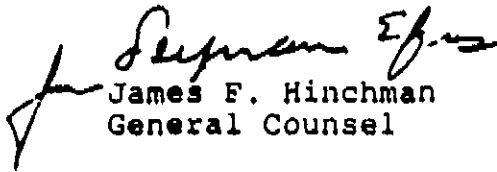
The crux of ART's protest is that the Navy failed to conduct meaningful discussions with it pursuant to section 15.610 of the Federal Acquisition Regulation (FAR) since the agency did not inform ART that it considered its price proposal too high. The protester asserts that because it was not advised of this deficiency, it was precluded from revising its proposal to offer the best value to the government.

In negotiated procurements, agencies are required to conduct meaningful discussions with offerors in the competitive range. Arthur Anderson & Co., B-245903; B-245903.2, Feb. 10, 1992, 92-1 CPD ¶ 168. In order for discussions to be meaningful, an agency generally must point out weaknesses, excesses, or deficiencies in a proposal. FAR § 15.610(c); Steinhoff & Sadler, Inc., B-246604; B-246604.3, Mar. 20, 1992, 92-1 CPD ¶ 299. However, an agency has no responsibility to inform an offeror that its price is too high unless the government has reason to think that the price is unreasonable. Warren Electrical Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34. Here, the record shows that the Navy reviewed ART's price proposal in detail and was satisfied that ART's price was reasonable in terms of the scope of effort and technical approach proposed by ART.

Furthermore, the Navy had no duty to enter into price discussions with ART solely because its price was significantly higher than the prices proposed by the other two offerors. Under FAR § 15.610(e)(2) the Navy was prohibited from informing ART that its price was high in relation to the other offerors unless it regarded ART's price to be too high or unrealistic for what it offered. See Warren Electrical Constr. Corp., supra. As noted above, the Navy did not consider ART's price too high for the approach the company proposed. In this connection, the evaluators found that ART offered a slightly better technical, management and schedule proposal than the other offerors' lower priced proposals. The government estimate was \$9,627,000 for the program which was closer to ART's offer than the other offers. Also, the record indicates that ART's price was itself not too high; the awardee and the other competitor, in an effort to win a contract which was important strategically to them, simply submitted below-

cost offers. Under these circumstances, we find no basis for questioning the Navy's decision not to discuss price with the protester.

The protest is denied.


James F. Hinchman
General Counsel