



Comptroller General
of the United States

52524

Washington, D.C. 20548

Decision

Matter of: Woodard and Curran, Inc.

File: B-257293

Date: May 24, 1994

DECISION

Woodard and Curran, Inc. (W&C) protests the award of a contract to Metcalf & Eddy, Inc. (M&E) under request for proposals (RFP) No. DACW33-93-R-0014, issued by the U.S. Army Corps of Engineers for the operation and maintenance of a government-owned groundwater treatment facility at the Baird & McGuire Superfund Site, in Holbrook, Massachusetts. The protester challenges the award on the basis that M&E made a material misrepresentation in its proposal by proposing N.E.T. as a subcontractor to perform a portion of the contract work when, in fact, M&E intended to utilize a firm other than N.E.T. to perform this work.

We dismiss the protest as untimely filed.

The RFP, issued on July 30, 1993, provided that proposals would be evaluated on the basis of three factors (listed in descending order of importance): (1) technical; (2) previous experience; and (3) price. The RFP stated that the technical and previous experience factors would be point scored, while price would be subjectively evaluated. The RFP provided that award would be made to the offeror whose proposal received the highest point score under the technical and experience factors and whose technical/price relationship is the most advantageous to the government.

Six firms, including W&C and M&E, submitted proposals by the amended September 24 closing date; three firms subsequently submitted revised best and final offers (BAFO) by December 20. On March 25, 1994, W&C received notice from the Corps that its BAFO was unsuccessful and that award had been made to M&E. W&C thereafter requested from the Corps a debriefing, which the Corps agreed to hold on April 8. Prior to the debriefing, however, the protester learned that the subcontractor, N.E.T., which M&E had proposed in its BAFO to perform the laboratory services portion of the contract would not be performing this work, and that M&E had contacted Roy F. Weston, Inc.--which had an exclusive teaming arrangement with the protester for the purpose of submitting an offer under the current RFP--about performing the laboratory services portion of the contract as a

subcontractor for M&E. At the debriefing, the protester asked the agency whether it was aware that M&E intended to substitute Weston for its proposed subcontractor, N.E.T.; the agency denied any such knowledge. On April 26, W&C confirmed in a conversation with an employee of N.E.T. at an environmental exposition that N.E.T. in fact would not be performing as a subcontractor for M&E under the current contract.

The protester argues that M&E materially misrepresented to the Corps the identity of the subcontractor it intended to utilize, and that the technical and price evaluations of M&E's BAFO are invalid because they were based on using N.E.T. as the subcontractor. The protester concludes that the agency should cancel M&E's award.

Our Bid Protest Regulations require that protests be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1994); Labat-Anderson Inc., B-246071.5, Aug. 31, 1992, 92-2 CPD ¶ 136. W&C's protest does not meet this standard. Both W&C's May 11 protest letter to our Office and an affidavit from W&C's senior project manager submitted as part of W&C's protest correspondence, clearly show that W&C knew prior to its April 8 debriefing that M&E would utilize Weston or another subcontractor, instead of N.E.T., to perform the laboratory services portion of the contract. Given that W&C's protest grounds are all based on this information, at least as of the date of its debriefing--April 8--W&C had in its possession all of the information needed to support its protest here. Instead of protesting to our Office within 10 days of obtaining this information, W&C continued to seek from the Corps and then from an employee of N.E.T. information confirming whether a subcontractor other than N.E.T. would perform the laboratory services portion of the contract. While this information may have substantiated what W&C already knew, i.e., that N.E.T. would not perform as a subcontractor for M&E under the current contract, it simply was not necessary to the presentation of its protest. A protester may not delay filing its protest until receipt of information confirming the existence of a protestable issue, since, as stated above, our Regulations measure timeliness from when the basis of protest first is, or should have been, known.

See EG&G Flow Technology, B-251785, Apr. 16, 1993, 13-1 FD ¶ 326. W&C clearly had sufficient information by April 16 to protest within 10 days of this date. Because W&C did not do so, its protest is untimely and will not be considered.

The protest is dismissed.



John M. Melody
Acting Associate General Counsel