



Comptroller General
of the United States

942315

Washington, D.C. 20548

Decision

Matter of: Forge Ahead Company

File: B-256681

Date: May 27, 1994

DECISION

Forge Ahead Company protests the award of a contract to Bryan E. Young under request for proposals (RFP) No. DAAC07-93-R-0002, issued by the Department of the Army for the operation of recreational facilities at the Sierra Army Depot, Herlong, California.

We dismiss the protest.

The RFP, issued on September 7, 1993, as a total small disadvantaged business (SDB) set-aside, contemplated the award of a firm, fixed-price contract for a base period of 1 year with two 1-year options. The agency received proposals from Forge Ahead, an SDB concern, and Mr. Young, a small business concern, by the RFP's November 1, 1993, closing date. Discussions were held and best and final offers were received.

Forge Ahead stated in its BAFO that it had "taken an aggressive approach to reducing costs to support this contract . . . therefore there is very little room to reduce price further." The contracting officer reviewed Forge Ahead's proposed price and found that it exceeded the independent government estimate (IGE) by more than 100 percent. The contracting officer determined that the price proposed by Mr. Young was reasonable and made award to that firm.

Forge Ahead initially filed an agency-level protest, which was denied. Forge Ahead then protested to our Office that because the RFP was set aside for SDB concerns, Mr. Young, who was not an SDB concern, was ineligible for award. The protester also contended that the RFP's specifications "were deficient" and had thus precluded Forge Ahead from making a "determination of [m]arket [p]rice." Forge Ahead finally protested that "the solicitation was not readvertised as either a [s]mall [b]usiness set-aside or as a full [and]

open competition and consequently [Forge Ahead] was not given the opportunity to re-bid."¹

The agency stated in its report to our Office, filed on April 14, that its award to Mr. Young was improper, and that it would take corrective action by resoliciting the requirement as a small-business set-aside to obtain a replacement for the improperly awarded contract. In the agency's view, this constitutes corrective action rendering Forge Ahead's protest academic.

We agree with the agency that its proposed resolicitation of the requirement renders academic the issues raised by Forge Ahead in its initial protest. That is, under the resolicitation, Forge Ahead will have the opportunity to compete for the award of a contract for the operation of the recreational facilities, with Mr. Young's performance under the improperly awarded contract being terminated upon selection of the successful offeror. Forge Ahead's protest of the RFP's specifications is also academic because the RFP is no longer the vehicle under which the agency will obtain these services.² Since it is not our practice to consider academic questions, these protest issues are dismissed. Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139.

In its comments filed in response to the agency report, Forge Ahead argues for the first time that the agency did not hold meaningful discussions because Forge Ahead was not informed during discussions that the agency considered its price "too high or unrealistic," and that it was therefore premature for the agency to withdraw the SDB set-aside.³ This issue was not raised in Forge Ahead's initial protest

¹In its initial protest, Forge Ahead did not protest the agency's decision to withdraw the SDB set-aside.

²In any event, Forge Ahead was required to file its protest of the RFP's specifications with our Office before the initial closing date for submission of proposals. Our Bid Protest Regulations specifically require that where, as here, a protest is based upon alleged improprieties in a solicitation which were apparent prior to the closing date for receipt of initial proposals, the protest must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1994); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

³As noted above, Forge Ahead stated in its BAFO that there was "very little room to reduce price further," thus suggesting that its price could not be so dramatically lowered as to approach the IGE as is now suggested by the protester.

to our Office, and must therefore independently satisfy our timeliness requirements. Unitor Ships Serv., Inc., B-245642, Jan. 27, 1992, 92-1 CPD ¶ 110. According to the record, Forge Ahead was first informed by the agency that its proposed price had been found too high on February 26, 1994, when it received the agency's decision on Forge Ahead's agency-level protest. The protester was therefore required to raise this issue within 10 working days of February 26. 4 C.F.R. § 21.2(a)(2). The protester's raising of this issue for the first time in its comments on the agency report, received by our Office on May 3, is thus untimely. Unitor Ships Serv., Inc., supra.

The protest is dismissed.⁴


James A. Spangenberg
Assistant General Counsel

⁴Forge Ahead claims in its comments on the agency report that it is entitled to its proposal preparation and protest costs. Because the agency promptly promised to under-take corrective action which rendered the protest academic, and the other grounds of protest were untimely filed and not for consideration, we see no legal basis at this time on which to award such costs. See Pulse Elecs., Inc., B-243828.2, Aug. 19, 1991, 91-2 CPD ¶ 164; compare Commercial Energies, Inc.--Recon. and Declaration of Entitlement to Costs, 71 Comp. Gen. 97 (1991), 91-2 CPD ¶ 499.