



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Continental Service Company

File: B-258807

Date: February 15, 1995

Ronald H. Uscher, Esq., Bastianelli, Brown & Touhey, for the protester.

Timothy F. Brown, Esq., and Shelley L. Ewald, Esq., Watt, Tieder & Hoffar, for Climate Masters, Inc., an interested party.

Riggs L. Wilks, Jr., Esq., and Elizabeth DiVecchio Berrigan, Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that bid opening official read only meaningless bid prices and did not make the bids available for inspection at bid opening is denied where the record shows that bid prices were read, although not in the detail which the protester would have preferred, and protester did not request to review the bids.

DECISION

Continental Service Company protests the award of a contract to Climate Masters, Inc. under invitation for bids (IFB) No. DAHC36-94-B-0026, issued by the Department of the Army for maintenance and repair of 17 U.S. Army Reserve facilities in Maryland, Delaware, and Washington, D.C. Continental argues that the site visit offered by the agency under the RFP was inadequate; that the contracting officer failed to provide complete and meaningful answers to questions raised by the protester prior to bid opening; and, that the agency's bid opening procedures were improper.

We dismiss the protest in part and deny it in part.

The protester's first two arguments--that the site visit was inadequate and poorly scheduled and that the contracting officer failed to provide meaningful answers to questions the protester raised prior to bid opening--are untimely.

By letter dated August 17, 1994, the protester requested a site visit for the facilities to be serviced under the IFB. In amendment 4, issued September 15, the agency scheduled a site visit for September 20; bid opening was on September 26. The protester attended the site visit and timely submitted its bid. On October 6, after being informed on September 30 that it had not received an award, Continental protested that the site visit was unguided so the firm could not ask questions; it was given insufficient time to inspect the facilities; and it had too little time to prepare its bid after the site visit.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Those rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1994); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. Here, if Continental believed that the site visit was scheduled too close to bid opening to provide sufficient time for bid preparation--a perceived deficiency in the solicitation as amended--the protester should have protested before the September 26 bid opening. Because Continental did not protest until October 6, its protest on this basis is untimely.

Continental's allegations concerning the adequacy of the site visit itself--that insufficient time was permitted and that the visit was unguided--also are untimely. Continental should have protested the perceived inadequacies of the site visit prior to the bid opening. See D.O.N. Protective Servs., Inc., B-249066, Oct. 23, 1992, 92-2 CPD ¶ 277.

In addition, Continental's allegation that the contracting officer failed to adequately respond to its questions is untimely for the same reason. By letters dated August 17 and 18, the protester asked a series of questions concerning the IFB and requested the names of the incumbent's subcontractors. The agency provided some answers to the questions in amendment 3, issued on September 12. While Continental argues that these answers were unclear, the firm did not request further clarification. By letter dated September 21, Continental again requested the names of Climate Masters's subcontractors and submitted a question concerning the requirement that fences be kept free of weeds. The agency responded on September 23. In its post-award protest, Continental now argues that the agency's answers to the firm's questions were untimely, confusing and incomplete and forced the firm to increase its bid price to cover uncertainties in the scope of work.

As noted above, our Regulations require that protests based upon alleged improprieties in a solicitation which are

apparent prior to bid opening must be filed prior to bid opening, 4 C.F.R. § 21.2(a)(1). If Continental was dissatisfied with the answers provided, or more generally, with information provided by the solicitation, Continental should have filed its protest on this basis prior to bid opening. Since Continental failed to do so, these contentions are untimely.

The protester also alleges that the bid opening procedures were improper. Specifically, the protester argues that the bid opening official read only meaningless bid prices and did not make the bids available for inspection in violation of Federal Acquisition Regulation (FAR) § 14.402-1(c).

The solicitation grouped the reserve centers to be serviced into four regions--groups 1 through 4--and reserved the right to make multiple awards for the individual groups for a base year with 2 option years. The bid schedule requested line item, extended and total prices for each group for the base period and the option periods. It also included a summary page, where each bidder was to provide the base and option year prices for each group and the total price for groups 1 through 4 for the base and the option years.

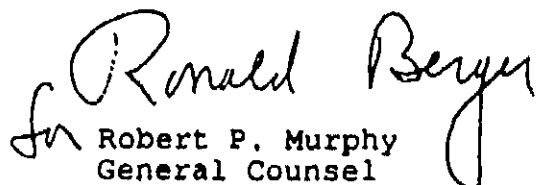
The bid opening officer read the total prices for the base year for groups 1 through 4 combined, and the total prices for each of the 2 option years for groups 1 through 4 combined. Continental argues that these prices were meaningless in determining the low bidder since the agency could award multiple contracts, with different bidders awarded contracts for different groups. The protester also asserts that the agency did not make the bids available for inspection at bid opening and that, although it requested a bid abstract, it received one only after the award.

While FAR § 14.402-1(a) provides that bids shall be read where practicable, even if an agency fails to do so, that failure does not render the procurement defective. See Williamson County Ambulance Serv., Inc., B-239017, June 22, 1990, 90-1 CPD ¶ 583. Here, the bid opening officer read the bids, only not in the detail which Continental now states that it would have preferred. In any event, the purpose of a public bid opening is to afford bidders the opportunity to be present when the bids are opened and to view the bids upon request. Id. Continental and other attendees were free to invoke this safeguard by requesting an opportunity to view the bids at the bid opening; while Continental asserts that bids were not made available for inspection, Continental did not request such an inspection opportunity.

Finally, the agency acknowledges that it was unable to provide a copy of the bid abstract to the protester because

a verified bid abstract was not completed until the date of award. We have found, however, that any delay by the procuring activity in furnishing the bid abstract is a procedural deficiency that has no bearing upon the validity of the bids received and therefore would not affect the legality of an award. The Allen Prods. Co., B-213318, Nov. 10, 1983, 83-2 CPD ¶ 548.

Accordingly, the protest is dismissed in part and denied in part.


for Robert P. Murphy
General Counsel