



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Palmer's Building Maintenance, Inc.

File: R-259426.2

Date: April 13, 1995

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### DECISION

Palmer's Building Maintenance, Inc. protests the award of a contract to RJB Properties, Inc. under request for proposals (RFP) No. GS05P94GAC0113, issued by the General Services Administration (GSA), for janitorial and related services at three federal buildings in Chicago, Illinois.

We dismiss the protest.

GSA issued the RFP on June 30, 1994, pursuant to the Small Business Administration's (SBA) section 8(a) program. The RFP contemplated award to the low-priced, acceptable offeror. Four firms submitted proposals, including RJB and Palmer's--the incumbent contractor for these services. GSA conducted a round of discussions and requested best and final offers (BAFO) from all offerors by October 19. In discussions with the protester, GSA advised that the protester's prices with respect to two federal buildings were considered too high, whereas its price for the third federal building were considered too low. In response, the protester increased its price for the third federal building.

Based upon the BAFO submissions, AAA American Systems Management, Inc. submitted the apparent low-priced proposal at \$4.73 million, RJB submitted the next low-priced proposal at \$5.28 million, and the protester submitted the third low-priced proposal at \$5.32 million. The apparent low-priced proposal was rejected based upon a negative responsibility determination of the low offeror by the SBA. RJB was found responsible by SBA and was awarded the contract on November 4.

On December 21, following the pursuit of an unsuccessful agency-level protest, Palmer's protested the award to RJB with our Office. The protester alleged that GSA improperly induced it to raise its price during discussions. The protester argued that, even if its price for the third federal building was low in comparison with the government estimate, GSA should not have identified this pricing deficiency during discussions, but should have accepted that

reasonableness of Palmer's proposed price, in deference to Palmer's experience as the incumbent contractor.

GSA addressed this allegation in its protest report. The report reflected that Palmer's price for the third federal building was lower than the government estimate, and GSA argued that it was required to identify Palmer's inadequate pricing during discussions. The protester did not respond in any way to GSA's explanation of its actions in its comments to the agency report. Rather, the protester raised a new, unrelated issue concerning RJB's legal authority to enter into the contract. Because the protester did not pursue its argument that discussions were misleading in the face of GSA's explanation and defense of its actions, we consider this issue abandoned and will not consider it further. See Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283.

As noted above, the protester raised a new issue in its comments to the agency report, namely, that RJB's Articles of Incorporation do not authorize the firm to perform janitorial contracts, but to operate fast-food franchises. The record reflects that the protester received RJB's Articles of Incorporation from the issuing state agency by letter dated November 28, 1994, which Palmer's presumably received no later than December 5 (1 calendar week after mailing). See TLC Moving, Inc.--Recon., B-234850.2, Apr. 11, 1989, 89-1 CPD ¶ 372. Palmer's did not protest RJB's authority to enter into the contract until filing its report comments on February 14, 1995. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1995), protests other than those involving apparent solicitation improprieties must be filed, either with our Office or the contracting agency, not later than 10 working days after the basis for protest was known or should have been known. Since Palmer's waited more than a month after receiving the relevant information to challenge the awardee's authority to enter into the contract, this issue is untimely and will not be considered. See id.; TLC Moving, Inc.--Recon., supra.

The protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel