



Comptroller General  
of the United States

201287

Washington, D.C. 20548

# Decision

**Matter of:** Professional Services Unified, Inc.  
**File:** B-261095  
**Date:** July 28, 1995

## DECISION

Professional Services Unified, Inc. (PSU) protests the award of a contract to Concord Steam Services, L.P. under invitation for bids (IFB) No. DTFA11-95-C-01000, issued by the Department of Transportation (DOT), Federal Aviation Administration (FAA), for facility management services at the FAA Roslyn Street facility in Denver, Colorado. PSU contends that the agency improperly awarded the contract on the basis of the base period prices received without consideration of the bidders' option period pricing; PSU contends that the IFB required that the award be made on the basis of the lowest-priced bid, including the base and option periods. The protester also challenges the agency's rejection of PSU's bid as nonresponsive for failure to include prices for certain line items pertaining to reimbursable labor hour requirements.

We dismiss the protest.

In its protest, PSU states that it had a company representative in attendance at the March 7 public bid opening and that, based upon that representative's notes from the bid opening, PSU knew that it was not the apparent low total (base and option) price bidder. PSU's bid offered the apparent second low total price. In its June 1 comments responding to the agency's May 17 report on the protest, PSU, for the first time, challenges the agency's determination that an intervening bidder, AMF International, submitted the apparent low total price. Based upon AMF's pricing information recorded on the agency's abstract of bids included in the agency's report, PSU contends AMF's bid contains inconsistencies and/or mistakes that indicate that PSU's total bid price may be lower than AMF's. PSU's recent challenge, however, is untimely because the protester failed to diligently pursue the information forming the basis for its protest.

At the time of bid opening, PSU knew, or should have known, that it was the apparent second low total price bidder and that it would have to displace AMF in order to be in line

41-154988-2  
064378/154988

for award under its own interpretation of the IFB's evaluation scheme. The AMF bid, including its base and option prices, was available to PSU for review at bid opening; PSU, in fact, states that it had a representative at bid opening to obtain such information. PSU filed a March 28 Freedom of Information Act (FOIA) request with the agency. By April 8, PSU received from the agency the first two pages of the agency's abstract of bids, containing only the bidders' base period prices. PSU did not further request from the agency the balance of the bid abstract containing the bidders' option prices, necessary to support its challenge to the AMF bid, but instead filed its protest with our Office on April 12 challenging the agency's award of a contract on the basis of the low base period price.

Although PSU knew, or should have known, of AMF's standing from bid opening, PSU waited approximately 12 weeks after bid opening, and approximately 8 weeks after it received the partial abstract of bids in response to its FOIA request, to raise its objections to the AMF bid's pricing based upon information that was included in the agency report. This information should have been diligently sought by the protester, at the latest, shortly after bid opening. Our Bid Protest Regulations, 4 C.F.R. Part 21 (1995), contain strict timeliness requirements for filing protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the basis for protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995); ACCESS for the Handicapped, 68 Comp. Gen. 433 (1989), 89-1 CPD ¶ 458. Where, as here, the protester has not diligently or expeditiously pursued the information that forms the basis for its protest, we will not view the protest as timely filed. Illumination Control Sys., Inc., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Since PSU has not made a timely challenge to the eligibility for award of the intervening bidder, PSU would not be low if its protest were sustained and the protester thus lacks the direct economic interest required to maintain a protest.

We note, however, that even if the protester was an interested party to challenge the basis of award here, the record supports the reasonableness of the agency's determination to award the contract on the basis of the base period bids without consideration of the option prices. The IFB contained Federal Acquisition Regulation (FAR) § 17.206(b) informing bidders of the following:

"the contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer."

The record shows that after bid opening but prior to award, several of the DOT tenants of the facility to be serviced under the contract reported to the contracting specialist that funds would be unavailable to permit the exercise of the options due to downsizing and reorganization. The protester does not dispute this underlying funding problem. The record also contains a determination that it was in the best interest of the government to evaluate only the base period prices that was approved by the contracting officer's supervisor. We believe the fact that the written supervisory determination was dated several days after the award date is immaterial here since the record demonstrates that the proper supervisory authority approved the evaluation of base period prices prior to the time of award and, in fact, signed the contract providing solely for performance of the base period requirements. The record thus supports the propriety of the agency's actions in evaluating and awarding a contract for the base period only. FAR § 17.206(b); Foley Co., 71 Comp. Gen. 148 (1992).

The protest is dismissed.

  
Michael R. Golden  
Assistant General Counsel