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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-189132

DATE: October 4, 1977

MATTER OF: PMS Systems Corporation

DIGEST:

1. Several bases of protest--relating to alleged solicitation defects--are untimely filed and not "significant" under GAO's Bid Protest Procedures (4 C.F.R. part 20 (1977)) because they were not filed prior to final closing date set for receipt of proposals, notwithstanding fact that protester lacked information relating to number and names of competing offerors, price rankings of initial proposals, and its final price standing.
2. Rational support is found for position taken by Department of Army that grounds of protest relating to selection of contractor for computer-related services lack merit. Grounds involved "buy-in," price-technical trade-offs, length of time to evaluate, and acquisition of data rights.

PMS Systems Corporation (PMS) has protested the award of a contract for computer-related services to Computer Systems International, Inc. (CSI), under Department of the Army request for proposals (RFP) DAADO5-76-R-0011 issued on August 16, 1976, by Aberdeen Proving Ground, Maryland.

Four proposals, including offers from PMS and CSI, were received by the Army on September 30, 1976. Technical evaluation of the proposals was then begun. PMS's technical proposal was rated highest and CSI's technical proposal was rated acceptable. Because of certain statements in PMS's proposal the Army decided, however, that "four points of clarification" should be brought to the attention of the offerors (three of the four companies submitting initial proposals) who had submitted acceptable technical proposals. Thereafter, negotiations with the offerors were held.

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Upon receipt of best and final offers at the conclusion of negotiations, a price evaluation showed the following ranking:

CSI	\$189,925
PMS	\$194,500

A firm, fixed-price contract was thereafter awarded to CSI on April 29, 1977, based on the RFP's award provision which specified:

"Any award to be made will be based on the lowest total price to the Government for a proposal determined acceptable in both technical and management."

PMS's grounds of protest are: (1) The contracting officer improperly added work requirements to the basic RFP during the course of the procurement which, among other things, caused PMS to be put "at a price disadvantage amounting to \$27,500 relative to the selected offeror" because of the Government's insistence on purchasing "rights-to-copy"; (2) The added work requirements contained "bid base" specifications that should have been altered to include "non-IBM computers"; (3) The RFP improperly listed "price alone" as the "sole selection criteria"; (4) The RFP contained PMS's proprietary data; (5) The PMS system offered substantially more capability and efficiency of usage--including a "single purpose" software system--than that to be obtained under the contract awarded to CSI; (6) The Army failed to adjust the "bid prices to account for differences in maintenance guarantees among offers" to PMS's disadvantage; (7) The Army took 7 months to evaluate offers so as to prejudice PMS; (8) The price proposed by the successful contractor represents a "buy-in"; and (9) The Army deviated from standard provisions of the Armed Services Procurement Regulation (ASPR) by negotiating a "limited rights" software agreement with CSI.

The Army insists that several of the above grounds of protest (filed with GAO on May 20, 1977) are untimely under GAO's Bid Protest Procedures (4 C.F.R. part 20 (1977)). Thus, Army argues that grounds of protest numbered 1, 2, 3 and 4 all relate to alleged solicitation defects which should have been protested, under 4 C.F.R. § 20.2(c)(1), no later than February 11, 1977, the date best and final offers were due to be submitted.

PMS argues that, although it was informed of the requirements giving rise to grounds of protest 1 thru 4, it "simply did not have adequate information to make a protestable case at that time." The further information allegedly needed by PMS prior to making a protest was the "number or names of the competing offerors," the "technical and price rankings of the various offerors on the original proposal," and the knowledge that PMS would not be the "low bidder." Moreover, PMS insists that the issues are "significant" and should be considered even if untimely filed. 4 C.F.R. § 20.2(c) (1977).

The first four bases of protest all relate to solicitation defects as to which the deadline for filing a protest under our Bid Protest Procedures is, at the latest, the final closing date for receipt of proposals. See 4 C.F.R. § 20.2(b)(1). This requirement is absolute on its face and is not in any way contingent on a would-be-protester's lack of knowledge as to the names and prices of other possible competitors under an allegedly defective solicitation. Similarly, a would-be-protester's decision to forego a protest on the supposition that it might be the successful offeror notwithstanding the considered solicitation defects is not a reason under the cited provision to delay a protest.

Neither do we consider the significance of the issues basically raised in the first four grounds of protest to be "significant" and for consideration even though untimely filed. The issues concern the questions of the desirability of the Government's purchase of rights in the requirement sought, the alleged proprietary character of the technical provisions in the RFP, and the alleged impropriety of the evaluation criteria. The questions involve either purely policy considerations in a particular procurement or facts relevant to a particular procurement. Thus, the first four bases of protest will not be considered.

The Department's positions on the remaining five bases of protest (keyed to the above numerical listing) may be summarized as follows: (5) Even though PMS submitted the highest-rated offer from a technical viewpoint, CSI's offer was technically acceptable. Consequently, award at a higher price would have violated the RFP's award provision; (6) PMS fails to realize that the Army has purchased more maintenance service at a lower price; (7) Although it is true that the procurement process was lengthy, the length of the process was not prompted by an intent to prejudice PMS; (8) There is no evidence of a "buy-in" (this position is implicit in the Army position); and (9) The Government's use of the phrase "Limited Rights" instead of "Restricted Rights" in its communications with the successful offeror was inadvertent--the Government intends to acquire software for the data base under "Restricted Rights" which means those minimum rights specified in ASPR § 7-104.9(a)(9)(1976 ed.) plus those additional rights expressly permitted to be acquired by ASPR § 9-601 (j) (1976 ed.).

We find rational support for the positions taken by the Army in rejecting the remainder of the PMS protest. The following specific comments are addressed to these grounds: (5) and (6) Decisions as to "price-technical" trade-offs--whether formulated in the RFP, as here, via a stipulation that award was to be made to the offeror submitting the lowest-priced, technically

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acceptable offer or otherwise--are properly reserved to the procuring agency subject to a "reasonableness" test which has not been violated here; (7) There is no evidence of an intent to prejudice PMS; (8) There is no legal basis to disturb an award even if a "buy-in" were intended. Mono-
gram Industries, Inc., B-184408, January 2, 1976, 76-1 CPD 3; and (9) There is no evidence of a prohibited rights acquisition...

Protest denied.

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Deputy Comptroller General
of the United States