



Comptroller General
of the United States

Washington, D.C. 20548

92-2 CRD 382

Decision

PR

Matter of: International Corporate Security

File: B-249562

Date: November 25, 1992

Jorge L. Aguilar for the protester.
Gary Pool for Today's Senturion Group, Inc., an interested party.
Paul S. Davison, Esq., Department of the Air Force, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where the protester's price modification of its best final offer was submitted after the protester was advised of the awardee's identity and that it was not in line for award, the contracting officer reasonably determined not to reopen discussions to consider the protester's modification since to do so would have compromised the integrity of the competition.
2. Protester's price reduction submitted after the date specified for receipt of best and final offers was properly rejected where none of the exceptions permitting the acceptance of late submissions, as outlined in the solicitation, applied.

DECISION

International Corporate Security protests the award of a contract to Today's Senturion Group, Inc. (TSG) under request for proposals (RFP) No. F41650-92-R-0005, issued by the Department of the Air Force for the installation, lease, and maintenance of a base-wide burglar alarm system at Kelly Air Force Base in Texas. The protester argues that the contracting officer improperly failed to reopen discussions to consider a price modification to its best and final offer (BAFO).

We deny the protest.

The solicitation, issued as a total small business set-aside on March 20, 1992, contemplated the award of a firm, fixed-price contract to the low priced, technically acceptable

offeror for a base period and four 1-year option periods. Amendment No. 0004, issued on June 5, included answers to technical questions posed by the protester and advised offerors that the closing time for receipt of initial proposals had been changed to June 10. Only two firms--the protester and TSG--submitted offers by the amended closing date of June 10. Following the evaluation of offers and written discussions, the contracting officer requested the submission of BAFOs by June 18. The protester's total BAFO was \$411,000 and TSG's total BAFO was \$372,985. By letter dated July 9, the contracting officer notified the protester that it intended to make an award under the solicitation to TSG as the low priced, technically acceptable offeror. In this letter, the contracting officer stated that the agency had no basis to question the size status of TSG, but afforded the protester an opportunity to challenge TSG's size status, in writing, by July 14. The contracting officer also reserved the right to reopen discussions if warranted by the situation.

The protester did not challenge TSG's size status, but by letter dated July 14 and received by the agency on the same day, the protester requested that the contracting officer reopen discussions and accept a price modification which would reduce its total BAFO by \$60,000 to \$351,000. The protester stated in its letter of July 14 that its total BAFO was higher "due to the vagueness of the [agency's clarification, included as part of amendment No. 0004, issued on June 5, of a technical question posed by the protester] (i.e., no detail circuit analysis)." The contracting officer determined, however, that he would not consider the protester's price modification since it was submitted after the closing time for receipt of BAFOs and he had notified the protester of his intention to award the contract to TSG. On July 17, the contracting officer awarded a contract to TSG as the low priced, technically acceptable offeror. The protester filed this protest on July 27.

The protester argues that the contracting officer improperly failed to reopen discussions to consider its price modification. The protester states that acceptance of its price modification would have resulted in cost savings to the government of \$21,985. The protester maintains that the award to TSG resulted in an award to other than the low priced, technically acceptable offeror in accordance with the terms of the solicitation.

The agency states that the contracting officer did not consider the protester's price modification because it was submitted on July 14, approximately 1 month after the closing time for receipt of BAFOs on June 18. The agency explains that the solicitation incorporated by reference the

clause at Federal Acquisition Regulation (FAR) § 52.215-10, captioned "Late Submissions, Modifications, and Withdrawals of Proposals," which provides that a modification of an offer which is received after the exact time specified for receipt of offers will not be considered, except in circumstances not applicable here. Because the contracting officer had made his determination that TSG was the low priced, technically acceptable offeror and because he had identified TSG to the protester as the proposed awardee, the contracting officer determined not to accept the protester's late price modification.

A contracting officer should not reopen discussions unless it is clearly in the government's best interest. See FAR § 15.611(c). No offeror is entitled to compel a reopening of a competition merely because it knows that it is not in line for award and lowers its price to improve its competitive advantage. The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 CPD ¶ 660. This rule is consistent with the purpose of the late proposal provisions in government solicitations--to alleviate confusion, to assure equal treatment of all offerors, and to maintain the integrity of the competitive system. Id.

Here, the protester's price reduction was submitted after the protester knew, based on the contracting officer's letter of July 9, that the contracting officer had determined to award the contract to TSG as the low priced, technically acceptable offeror. Thus, when it submitted its price reduction, the protester knew the awardee's identity and that its offer was not low. We think the contracting officer reasonably concluded that it would compromise the integrity of the competition to reopen discussions on the basis of an offered price reduction from an offeror who knew that it was not in line for award when it submitted its offer of a price reduction. See The Marquardt Co., supra.

To the extent the protester contends that the contracting officer was authorized to accept its late offer because it was more favorable than TSG's offer, FAR § 52.215-10(c) provides that "a late modification of an otherwise successful offer which makes its terms more favorable to the government will be considered at any time it is received and may be accepted." This clause allows the government to accept more favorable terms only from an offeror that would be in line to receive the contract, prior to submission of the late offer; it does not permit acceptance of a late modification from a firm not already in line for award. Schuerman Dev. Co., B-238464, Apr. 25, 1990, 90-1 CPD ¶ 423. A comparison of the protester's BAFO and TSG's BAFO, submitted by the June 18 closing time, shows that the

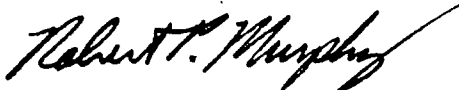
protester's price was higher than TSG's price, and therefore, the protester was not in line for award. As a result, there was no basis for accepting the protester's price reduction, received after the closing time for receipt of BAFOs.

Finally, the protester maintains that it overpriced its BAFO because the technical information furnished by the contracting officer in amendment No. 0004, issued on June 5, in response to a particular technical question posed by the protester, was inadequate.

Amendment No. 0004 included answers to technical questions asked by the protester. Amendment No. 0004 also established June 10 as the closing time for receipt of initial proposals. To the extent the protester believed that the answer to a particular technical question was vague or otherwise inadequate and affected its offer. This constitutes a challenge to an alleged solicitation impropriety.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1992); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, it is clear that the protester knew, or should have known, that the contracting officer's June 5 clarification information was not sufficient for purposes of pricing its offer at the time the firm received the information. Under our Regulations, the protester should have protested the alleged inadequacy of the information by June 10, the closing time for receipt of initial proposals. Its protest of the clarification information on July 27, almost 7 weeks after the closing time for receipt of initial proposals, is therefore untimely.¹

Accordingly, the protest is denied.



for James F. Hinchman
General Counsel

¹Contrary to the protester's assertion, there is no evidence in the record that the agency furnished technical clarifications in bad faith.