



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sublette Electric, Inc.
File: B-232586
Date: November 30, 1988

DIGEST

1. Where an offer which had been extended for the period requested by the contracting agency nevertheless expires (as do all other offers), the contracting officer may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations to make an award on the basis of the offer as submitted since waiver under these circumstances is not prejudicial to the competitive system.
2. Allegation that other offerors may have acquired proprietary information from a former employee of protester involves a dispute between private parties which does not provide a basis for protest to the General Accounting Office.

DECISION

Sublette Electric, Inc., protests the award of a contract to Shorrock Electronic Systems, Inc., under request for proposals (RFP) No. DACA05-88-R-0069, issued by the U.S. Army Corps of Engineers, for the acquisition of a security fence at the Navajo Army Depot, Arizona. The protester alleges that certain irregularities adversely affected this procurement. Specifically, the protester contends that the Corps did not make an award within the proposal acceptance period, as extended, and that two successive requests for best and final offers (BAFO) were improper. Sublette also alleges that other offerors may have acquired certain

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proprietary information from a former employee or employees of Sublette.^{1/}

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

The RFP was issued on March 16 and offers were initially received on April 28. The agency reports that on May 5, 1988, Teledyne-Brown Engineering (TBE) submitted an agency-level protest against the solicitation regarding the electronic Intrusion Detection System (IDS) portion of the project. During the pendency of TBE's protest, the Corps attempted to modify the requirements of the solicitation to enable the procurement to proceed despite the protest. On June 16, the Corps issued amendment No. 5 which made optional the installation of the IDS. By letter dated June 17, the Corps advised the offerors to submit revised cost proposals by June 27, which would be considered as BAFOs and that proposals should include a 30-day acceptance period.

After BAFOs were received, TBE, by letter dated July 11, withdrew its protest. As a result of the withdrawal on July 20, the Corps issued amendment No. 6 to the RFP to again require the electronic IDS. The Corps advised the offerors by cover letter dated July 21 to submit revised cost proposals by July 29, which would be considered as the second BAFOs and that proposals should include a 10-day extension of the proposal acceptance period. The record shows that Shorrock, in response to the first request for BAFOs, extended its proposal acceptance period on June 24 for 30 days from June 27 as requested, and that the firm also provided the requested 10-day extension in its second BAFO. However, it appears that Shorrock's proposal acceptance period expired on August 6 and was only revived on August 8 (received by the agency on August 11) for an additional 30 days to September 5. The agency awarded the contract to Shorrock on September 14. Further, it also appears that the other offerors' proposal acceptance period also expired at least once prior to the award date. This protest followed.

^{1/} In its comments to the agency report, the protester, for the first time, suggests that the technical evaluation was flawed and urges us to delay our decision until it receives documents under its Freedom of Information Act (FOIA) request. We merely note that the protester may file a new protest based on information revealed in its FOIA request, if otherwise timely.

The first irregularity cited by the protester in support of its position is that the Corps did not make award within the 10-day extension period for acceptance of offers. As noted above, the record does show that Shorrock's offer expired and was revived but had again expired. However, even though the awardee's offer had expired, it is not improper for an agency to accept an expired offer for a proposed award without reopening negotiations. Protective Materials Co., Inc., B-225495, Mar. 18, 1987, 87-1 CPD ¶ 303. We have held that where the acceptance period has expired on all proposals, the contracting officer may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations to make an award on the basis of the offer as submitted since waiver under these circumstances is not prejudicial to the competitive system. Data Technology Industries, Inc., B-197858, July 1, 1980, 80-2 CPD ¶ 2. Here, the awardee did not seek any advantage over other offerors. It offered, as did the other offerors, the 10-day extension to its acceptance period as requested by the Corps in the second request for BAFOs. Thus, in our view, waiver of the expiration of its proposed acceptance period did not prejudice the competitive system.

Next, the protester argues that it was improper to request two successive BAFOs and that these successive requests were prejudicial to Sublette, by "opening the door to collusion among bidders." Our Bid Protest Regulations provide that in negotiated procurements alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested before the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). Here, although second BAFOs were due on July 29, Sublette did not file a protest challenging the request for second BAFOs until September 13. Accordingly, this protest ground is untimely and will not be considered. See Wylie Mechanical, B-228695, Oct. 27, 1987, 87-2 CPD ¶ 407. In any event, the record shows that there was a valid reason for the second round of BAFOs. Specifically, the agency changed its requirements for the electronic IDS. Where a valid reason exists for requesting a second round of BAFOs, there is nothing improper with requesting a further BAFO. M. Rosenblatt & Sons, B-230026, B-230026.3, Apr. 26, 1988, 88-1 CPD ¶ 409. The protester has not shown that the second request was made for other than a valid reason or that it resulted in collusion among offerors.

Finally, Sublette alleges that other offerors may have acquired its proprietary information from a former employee or employees of Sublette. This issue, however, is beyond the scope of our bid protest function. Radio TV Reports, Inc., B-224173, Sept. 24, 1986, 86-2 CPD ¶ 344. An

allegation concerning the actions during the competitive process of a former employee and a competitor offeror involves a dispute between private parties concerning business practices and relationships which is properly for resolution by the involved private parties through the courts, if necessary. Id. Thus, this aspect of the protest is also dismissed. We again note that Sublette has failed to substantiate its claim that any agency action was involved in the alleged misuse of proprietary data; rather it appears that private parties alone are allegedly involved.

The protest is denied in part and dismissed in part.

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