

Schatz
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fort Biscuit Company

File: B-247319

Date: May 12, 1992

Robert G. Fryling, Esq., and Julie L. Witcher, Esq., Saul, Ewing, Remick & Saul, for the protester, Jed L. Babbin, Esq., and Lori B. Feld, Esq., McGuire, Woods, Battle & Boothe, for Interbake Foods, Inc., an interested party, Michael Trovarelli, Esq., and Maria C. Santucci, Esq., Defense Logistics Agency, for the agency. Sylvia Schatz, Esq., John M. Melody, Esq., and David Ashen, Esq., GAO, Office of the General Counsel, participated in the preparation of the decision.

DIGEST

Extension of closing date for receipt of best and final offers was proper, even though it was in response to one offeror's request and extension amendment was not transmitted to offerors until shortly after prior closing time had passed; agency properly may extend closing date at request of a particular offeror in order to enhance competition.

DECISION

Fort Biscuit Company protests award of a contract to Interbake Foods, Inc. by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, under request for proposals (RFP) No. DLA13H-91-R-2475 for 58,231,000 salted soda crackers (National Stock Number 8920-00-769-1557). Fort Biscuit principally argues that the agency improperly extended the closing date for submission of proposals.

We deny the protest.

The RFP requested proposals for a firm, fixed-price contract to provide 123,377,892 salted soda crackers, which were to be supplied as a component of meals-ready-to-eat (MRE) in support of the armed services. Four offerors, including Fort Biscuit, Interbake, Bremner, and Crescent submitted initial proposals by the August 26, 1991 closing date, as amended. Following the evaluation of initial proposals, all proposals were included in the competitive range, and written and oral discussions were conducted with the offerors.

DPSC issued a series of amendments, which reduced the quantity to 103,346,621 and established a closing date for receipt of best and final offers (BAFO) of December 30 at 2:00 p.m.

When DPSC had not yet received a BAFO from Interbake by 12:30 p.m. on the closing date, the contracting officer telephoned the firm to determine whether it would submit a BAFO before the 2:00 p.m. deadline. Interbake informed the contract specialist that it would be unable to do so because the firm had received the last amendment while its offices were closed for 2 weeks during the Christmas holiday season. In order to assure that Interbake would be able to remain in the competition, the contracting officer decided to extend the closing date to January 3, 1992. Although the amendment doing so was signed shortly prior to the 2:00 p.m. deadline, DPSC did not transmit the amendment to offerors (by facsimile) until 3:16 p.m. (The agency also telephoned Crescent to request a revised BAFO, but could not reach the firm.) Interbake subsequently submitted a revised BAFO by the amended closing date. Fort Biscuit and Bremner already had submitted their BAFOs by the December 30 deadline, and chose not to revise their offers in response to the amendment.

After receipt of BAFOs, DPSC was informed that, due to the cessation of hostilities in the Persian Gulf and the unexpected collapse of the Soviet Union, the production of MREs containing the crackers would be reduced. As a result, DPSC issued amendment 0006, which reduced the quantity to 58,231,000 and requested revised BAFOs within 1 day, by January 16. Following receipt of the second BAFOs, DPSC made award to Interbake after evaluating its proposal as offering the best value to the government.

Fort Biscuit argues that it was improper for DPSC to extend the December 30 BAFO closing date because it was done too late in the process and the amendment doing so was not issued until after the December 30, 2:00 p.m. deadline. Fort Biscuit claims that the closing date was extended solely for the benefit of Interbake, which indicates bias on the agency's part since the agency earlier had denied Fort Biscuit's request for a 1-day extension for submission of its initial proposal. Fort Biscuit maintains it was prejudiced by DPSC's allowing Interbake to remain in the competition because this resulted in Interbake's having more time than Fort Biscuit to submit its BAFO. Fort Biscuit also asserts it was prejudiced by the extension because information in its BAFO, which was submitted by facsimile transmission on December 30 prior to the time set for closing, might have been improperly disclosed. Fort Biscuit concludes that the agency should not have extended the closing date and instead should have eliminated Interbake

from the competition based on its statement that it could not submit its BAFO by the December 30 deadline.

We find that the protest is without merit. First, we do not agree that the BAFO due date extension was too late in the process. While Federal Acquisition Regulation (FAR) § 15.410(a) contemplates that solicitation amendments ordinarily will be issued prior to the closing date, it does not prohibit the issuance of amendments extending the closing date after the closing date has passed. See Institute for Advanced Safety Studies--Recon., B-221330.2, July 25, 1986, 86-2 CPD ¶ 110 (issuance of an amendment extending the proposal due date for receipt of proposals 3 days after expiration of the original closing date was proper); see also Impact Instrumentation, Inc.--Recon., B-198704, Oct. 3, 1980, 80-2 CPD ¶ 239. Further, it is proper to extend the closing date for receipt of proposals in order to enhance competition, see Solar Resources Inc., B-193264, Feb. 9, 1979, 79-1 CPD ¶ 95, and, applying this principle in an invitation for bids context, we have held that issuance of an amendment extending the time for bid opening even after the deadline has passed is proper where its intent is to enhance competition by permitting an offeror sufficient time to prepare an offer. Coast Canvas Prods. II Co., Inc., B-225017, Nov. 7, 1986, 86-2 CPD ¶ 538. Furthermore, extending a BAFO due date to enhance competition is unobjectionable even where it is done at the request of a certain offeror. TRS Design & Consulting Servs.--Recon., B-218668.2, Oct. 2, 1985, 85-2 CPD ¶ 370.¹

Here, there were only four offerors, including Interbake, and we think DPSC properly could determine that extending the BAFO due date to maximize the number of offers from which it could choose was a legitimate means of enhancing competition. Although the agency did not extend the initial closing date 1 day at Fort Biscuit's request, the agency apparently did not deem an extension at that juncture necessary to assure full and open competition. Fort Biscuit's submission of a proposal (with the subsequent


¹Fort Biscuit maintains that a closing date can only be extended where the agency has reason to believe that the proposals of an important segment of offers were delayed in the mail for reasons beyond the offerors' control, or unanticipated events interrupt normal governmental processes so that the closing was impracticable. However, these two circumstances, identified in FAR § 14.402-3 as situations in which bid opening may be postponed after the time scheduled for bid opening, are not exclusive, and extensions are permissible generally to increase competition. Combustion Equip. Co., Inc., B-228291, Dec. 24, 1987, 87-2 CPD ¶ 627.

opportunity to revise it if there in fact had been insufficient time initially) tends to support the agency's judgment that refusal to grant the extension of the initial closing date would not reduce competition. The fact that the agency, with the knowledge that only four offerors were in the competition, later extended the BAFO due date when it learned that such action would be necessary to avoid losing one of those four offerors does not demonstrate bias in favor of Interbake or against Fort Biscuit.

Indeed, the record otherwise confirms that DPSC acted in an even-handed manner in seeking to assure that an adequate number of offerors remained in the competition. Fort Biscuit originally submitted its BAFO by means of Federal Express. When it subsequently appeared that delivery to the place established for receipt of proposals might not be made prior to the closing time on December 30, the agency contract specialist encouraged Fort Biscuit to submit its proposal by facsimile transmission so as to assure its timely receipt.

We also fail to see how the agency's extension of the closing date resulted in prejudice to Fort Biscuit. Fort Biscuit was advised of the amended January 3 closing date and given the same amount of additional time to submit a revised proposal as Interbake. The protester's speculation notwithstanding, the record contains no evidence that information in its proposal was disclosed. Even if the agency's possession of a faxed copy of Fort Biscuit's BAFO increased the possibility of an inadvertent or other disclosure of information in Fort Biscuit's BAFO, the mere existence of this increased possibility does not constitute proof that a disclosure occurred. Associated Tool Co., Inc., B-247001, Apr. 21, 1992, 92-1 CPD ¶ ____. Without some evidence indicating a likelihood that such a disclosure occurred, there is no basis to conclude that Fort Biscuit was prejudiced by the agency's actions here.

The protest is denied.


for James F. Hinchman
General Counsel