



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Professional Rehabilitation Consultants, Inc.

File: B-275871

Date: February 28, 1997

Richard L. Moorhouse, Esq., and Dorn C. McGrath III, Esq., Holland & Knight, for the protester.

Jeanne Anderson, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Post-debriefing protest of contracting agency's evaluation of proposals is dismissed as untimely where protester failed to request its debriefing until 2 months after it was informed that it had not received award; a protester's affirmative obligation to diligently pursue information that forms the basis for its protest extends to the diligent pursuit of a debriefing, which must be requested within a reasonable period of time.

DECISION

Professional Rehabilitation Consultants, Inc. (PRC) protests the award of contracts to Professional Rehabilitation and Occupational Services & Associates (PROS) and to Gallagher and Associates under request for proposals No. 623-20-96, issued by the Department of Veterans Affairs (VA) for vocational rehabilitation services. PRC principally argues that the agency unreasonably evaluated its proposal.

We dismiss the protest as untimely.

The solicitation anticipated the award of multiple fixed-price contracts for the provision of vocational rehabilitation services to veterans in the state of Oklahoma. Two line items under the base year and under each option year sought counseling services in connection with the training and rehabilitation of veterans with service-connected disabilities. Contracts would be awarded to those firms whose offers were evaluated as being most advantageous to the government. VA's evaluation of the proposals it received resulted in awards to PROS and Gallagher for the line items at issue here.

By letter dated October 1, 1996, VA informed PRC that the contracts had been awarded to these other firms. There is no evidence that PRC had any contact with the agency until more than 2 months later, December 12, when PRC requested a debriefing. During its December 23 debriefing, PRC was advised that the central weakness of its proposal was its failure to adequately describe the work experience of its counselor. PRC's December 26 protest principally challenged this conclusion.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier; however, in the case of a protest challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required, a protest filed not later than 10 days after the date on which the debriefing is held will be timely. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)); Automated Medical Prods. Corp., B-275835, Feb. 3, 1997, 97-1 CPD ¶ __ .

These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In this regard, protesters have an affirmative obligation to diligently pursue information that forms the basis for their protests. If they do not do so within a reasonable time, we will dismiss the protest as untimely. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86; see also General Physics Federal Sys. Inc., B-274795, Jan. 6, 1997, 97-1 CPD ¶ 8.

Since this procurement was conducted on the basis of competitive proposals, PRC was entitled to request and receive a post-award debriefing. Federal Acquisition Regulation § 15.1004 (FAC 90-27). The requirement to diligently pursue the information on which a protest is based includes diligently pursuing a debriefing, which allows protesters to determine whether they have a basis for protest and, if so, what it is. Unicom Sys. Inc., B-222601.4, Sept. 15, 1986, 86-2 CPD ¶ 297. We do not consider PRC's delay of more than 2 months--from the October 1 date of the notice of award to the December 12 request for a debriefing--to be diligent pursuit.¹ Id.

¹PRC could have requested, in writing, a debriefing within 3 days of receiving the agency's notice of award and the agency would have been required to debrief PRC within 5 days of receiving the firm's request, if practicable. 41 U.S.C. § 253b(e) (1994).

PRC appears to argue that the concept of due diligence no longer applies to debriefings since, under our recently revised regulations, we will not consider a protest challenging a procurement conducted on the basis of competitive proposals where a debriefing is requested and required if filed before the debriefing date offered to the protester. Section 21.2(a)(2), 61 Fed. Reg. supra; The Real Estate Center, B-274081, Aug. 20, 1996, 96-2 CPD ¶ 74. The protester is mistaken. We cannot permit the timing of the protest process to be governed by a protester's discretionary decision to delay seeking a debriefing. Such a rule would severely compromise the ability of our Office to expeditiously and fairly resolve protest controversies without unduly delaying or disrupting the competitive procurement process. See Technology Management and Analysis Corp., B-256313.3; B-256313.5, May 9, 1994, 94-1 CPD ¶ 299. Due diligence in this case means not that PRC should have filed its protest before its debriefing, but that the firm should have requested its debriefing within a reasonable period of time. Indeed, the regulation cited by PRC was designed, in part, to encourage early and meaningful debriefings. 61 Fed. Reg. 39040.

The protest is dismissed.

Comptroller General
of the United States