



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dayton T. Brown, Inc.--Reconsideration

File: B-223774.4

Date: January 21, 1987

DIGEST

Decision dismissing protest grounds as untimely filed is affirmed where protester does not establish on reconsideration that the protest grounds, first raised in comments on agency report, could not have been raised in original protest submission.

DECISION

Dayton T. Brown, Inc. (Brown), requests reconsideration of our decision Dayton T. Brown, Inc., B-223774.3, Dec. 4, 1986, 86-2 C.P.D. ¶ , in which we denied in part and dismissed in part as untimely Brown's protest against the proposed award of a contract to National Technical Systems (National) under Department of the Navy request for proposals (RFP) No. N00024-86-R-4137(Q), for engineering and technical services. Brown contends that we erroneously found its protest untimely in part. We affirm our decision.

We found that Brown's arguments that the Navy had misapplied the evaluation criteria and improperly evaluated National's proposed costs were untimely. Although Brown had stated in its initial protest submission that it believed the Navy would make award based on criteria "inconsistent with the requirements of the solicitation," that submission contained no more detailed argument. We thus assumed this statement was related to another allegation by Brown questioning a change by the Navy in the weight to be accorded the technical and cost evaluation factors. The Navy interpreted Brown's protest similarly and addressed only this evaluation factor weighting issue (as well as other issues not relevant here) in its administrative report.

In its comments on the Navy's report, Brown stated that the Navy had "missed the mark" in interpreting Brown's position,

037891

and proceeded to present a lengthy, detailed argument that the Navy had failed to evaluate the proposals for all technical requirements, to Brown's competitive disadvantage, and that a proper analysis of National's proposed costs would have shown that those costs were unrealistically low. Since these detailed protest grounds did not appear to be based on information newly revealed in the agency report, there appeared to be no reason why they could not have been raised in the original protest. We thus concluded that the new grounds were untimely.

Brown requests reconsideration of our conclusion on two grounds: (1) Brown's general reference to evaluation inconsistencies in its original protest constituted a timely assertion of the detailed technical and cost evaluation protest grounds, and (2) Brown was not on notice of these protest grounds until it received the Navy's report.

We effectively addressed the first of these grounds in our prior decision, holding that since the detailed assertions presented in Brown's comments were nowhere explained in its original protest, the protest did not serve to raise them. In this regard, our Bid Protest Regulations expressly require that grounds of protest be set forth in detail. 4 C.F.R. § 21.1(c)(4) (1986). Brown's reconsideration request does not alter our view that Brown's general allegation of a faulty evaluation did not suffice to raise the detailed protest grounds contained in its comments.

Brown's second basis for reconsideration is equally unpersuasive. The Navy's administrative report did not address the items involved in the detailed protest grounds in Brown's comments and included no specific information on the technical or cost evaluation process. It was for this reason that we concluded in our decision that Brown's detailed grounds were not based on new information in the agency report. Our conclusion also was based on the language in Brown's comments, noted above, indicating that these were the specific grounds on which the protest had been based from the outset, and that the Navy had misinterpreted them in its report. At the same time, Brown nowhere stated in its comments that its detailed arguments were based on new information in the Navy's report. This further suggested to us that Brown's comments were intended merely to set out the details on which its original protest was founded. Our view remains unchanged.

Brown indicates that it was not able to set forth its detailed arguments until it learned of the difference in its and National's proposed costs. We have closely examined

Brown's arguments, however, and while this proposed cost differential well may have been viewed by Brown as evidence supporting its detailed protest bases, these protest bases are not dependent on the difference in the costs. In other words, we do not agree with Brown that knowledge of the proposed cost differential was necessary in order for Brown to raise its detailed protest grounds.

It therefore remains our view that Brown's detailed evaluation protest grounds could, and should, have been presented in its original protest and that, because they were not presented until more than 10 working days after they were known to Brown, they were untimely and not for consideration. Our decision dismissing these grounds of protest is affirmed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel