



The Comptroller General
of the United States

Washington, D.C. 20548

Ayer - PL

Decision

Matter of: Engineering Consultants & Publications--
File: Reconsideration
B-225982.5
Date: June 16, 1987

DIGEST

1. In evaluating corporate experience, contracting agency may consider offeror's recent experience on particular projects, since projects are illustrative examples of the offeror's experience. Moreover, contracting agency properly considered offeror's very recent experience (gained after issuance of solicitation) on three agency projects which offeror first mentioned in its best and final offer, since corporate experience evaluation factor fairly encompasses any experience that the contracting agency reasonably believes the corporation may draw on in the event that it receives the award.
2. Request for reconsideration is untimely when filed more than 10 days after protester learned or should have learned the basis for reconsideration.

DECISION

Engineering Consultants & Publications (ECP) protests the award of a contract to Scientific Management Associates, Inc. (SMA), by the Department of the Navy under request for proposals (RFP) No. N00140-84-R-0811, for engineering and technical services. We dismissed two previous ECP protests of the award on procedural bases. ECP now contends that it has received new information showing that the evaluation of the proposals was flawed by the Navy's improper use of undisclosed evaluation factors. ECP also seeks reconsideration of our dismissal of ECP's second protest, Engineering Consultants & Publications, B-225982.2, Feb. 12, 1987, 87-1 C.P.D. ¶ 158.

We deny the protest, and we dismiss the request for reconsideration.

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BACKGROUND

We dismissed ECP's first filing because it did not provide a detailed basis for protest as required by our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and 21.1(f) (1986). The protest merely advised that SMA's offer was \$364,830 higher than ECP's offer; ECP had provide the Navy with similar services for at least 15 years; and the Navy erroneously evaluated ECP's technical ability because the Navy evaluators lacked personal knowledge of ECP's technical capabilities and experience. The submission did not provide a basis of protest, since there is no requirement in negotiated procurements to award the contract on the basis of the lowest cost, unless the solicitation so provides, E. H. Pechan & Associates, Inc., B-225648, Feb. 17, 1987, 87-1 C.P.D. ¶ 176, and the outcome of proposal evaluations depends on proposal contents and not on the personal knowledge of the evaluators. See Mutual of Omaha Insurance Co., B-201710, Jan. 4, 1982, 82-1 C.P.D. ¶ 2 at 7.

Following our dismissal of ECP's initial protest, ECP phoned the Navy seeking more information concerning the evaluation of its proposal. The Navy responded by reading the entire technical evaluation to ECP over the telephone. On the basis of this information ECP filed a second protest contending that: (1) the Navy did not properly review ECP's technical proposal and its supporting materials, which showed ECP's capabilities and experience in systems engineering/design dating back to 1973; (2) even if the Navy had reservations about ECP's ability to perform the high technology portion of the contract (5.74 percent of the work), the Navy should have awarded the company the low-technology portion (94.26 percent of the work) for which its was clearly qualified; and (3) the Navy erroneously concluded that ECP's high percentage of newly hired personnel (80 percent) would create a management coordination problem. We dismissed ECP's second protest as untimely because ECP filed it with our Office more than 10 working days after the telephone conversation. See 4 C.F.R. § 21.2(a)(2).

CURRENT PROTEST

ECP states that records received as a result of a Freedom of Information Act (FOIA) request show that during proposal evaluation SMA received special consideration for award because of its involvement in current Navy projects, which ECP argues establishes that the Navy improperly used undisclosed evaluation factors. ECP further objects to the Navy's consideration of SMA's experience concerning these projects on the ground that SMA gained the experience after

the issuance of the RFP.^{1/} We will consider this ground of protest because it relies entirely on information received under a FOIA request, and ECP filed it within 10 working days after receiving the information. Design Data Corp.-- Reconsideration, B-223982.3, Nov. 6, 1986, 86-2 C.P.D. ¶ 526. We find no merit in ECP's position, however.

The RFP set out five evaluation factors. The two most important factors, corporate experience and personnel resources, were of equal weight. The three remaining factors, in descending order of importance, were: management plan/approach, contractor facilities, and cost and cost realism.

The Navy received three offers, which it evaluated and determined to be within the competitive range. The evaluators initially ranked SMA first and ECP third. The Navy held two rounds of technical discussions addressing proposal deficiencies with both SMA and ECP, each followed by a call for best and final offers (BAFO) and a further evaluation. The initial ranking of the firms remained unchanged after the second evaluation. Following the third evaluation, however, ECP advanced from third to second place, with a rating of acceptable, while SMA remained in first place, with a rating of highly acceptable.

ECP's allegation that the Navy improperly used undisclosed evaluation factors stems from the evaluators' comments on SMA's corporate experience following the submission of the second BAFO. The evaluators commented on SMA's extensive recent experience on three Navy projects, pointing to one project in particular as a significant example of SMA's corporate experience in system design. SMA's second BAFO provided a thorough description of its efforts in this area, and the evaluators thought that this corporate experience would prove a valuable asset to the Navy in the future.

The Navy responds that the evaluators' comments on SMA's extensive recent experience on three Navy projects are not evidence of unannounced evaluation factors; rather, the comments evidence that SMA actually had the corporate experience it claimed.

^{1/} ECP further attempts to reargue the contention that the Navy did not properly review ECP's technical proposal. As discussed above, this issue was untimely raised, so we will not consider it.

The evaluation of proposals is the function of the contracting agency, and we limit our review of allegedly improper evaluations to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. See Delany, Siegal, Zorn & Associates, B-224578.2, Feb. 10, 1987, 87-1 C.P.D. ¶ 144. Moreover, the protester has the burden to prove its case, and mere disagreement with a technical evaluation does not satisfy this requirement. Id.

Clearly, each evaluation factor and its relative importance should be disclosed to offerors. See 51 Comp. Gen. 397 (1972). A contracting agency, however, can consider other matters not specifically announced if they are reasonable encompassed within the main factors. GTE/IS Facilities Management Corp., B-186391, Sept. 7, 1977, 77-2 C.P.D. ¶ 176.

We find the Navy's review of SMA's proposal fair and reasonable and consistent with the stated evaluation criteria. We think it clear that the Navy evaluators were merely citing illustrative examples when they referred to SMA's prior recent experience on the three Navy projects. GTE/IS Facilities Management Corp., B-186391, supra. Moreover, we see no merit in ECP's contention that the Navy improperly considered SMA's very recent experience (i.e., experience gained after the Navy issued the RFP), because the corporate experience evaluation factor fairly encompasses any experience that the contracting agency reasonably believes the corporation may draw on in the event that it receives the award. This obviously includes any recent experience of which the contracting agency is aware.

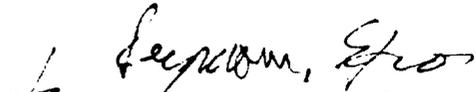
RECONSIDERATION

ECP seeks reconsideration of our dismissal of ECP's second protest, Engineering Consultants & Publications, B-225982.2, supra, urging that it did not understand that telephonic receipt of information forming the basis of its protest would begin the 10 working day time limit for filing a protest.

ECP filed its request for reconsideration with our Office on March 16, 1987. Our Regulations require the filing of such requests no later than 10 working days after the protester learned or should have learned the basis for reconsideration, whichever is earlier. 4 C.F.R. § 21.12(b). Although ECP does not state when it received the February 12 decision, we estimate that it takes no more than 1 calendar week for a protester to receive a decision through the mail. Gateway Cable Co.--Reconsideration, B-223157.2, Nov. 5, 1986, 86-2 C.P.D. ¶ 518. On that

basis, ECP presumably received our decision on February 19,
and its request for reconsideration, filed more than
3 weeks later, is untimely.

The protest is denied, and the request for reconsideration
is dismissed.


Harry R. Van Cleve
General Counsel