



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technology and Management Service, Inc.

File: B-231025.5

Date: August 11, 1988

DIGEST

The General Accounting Office will not reinstate a protest where essential protest issues raised have already been decided by the General Services Administration Board of Contract Appeals and remaining protest issue that protester was denied an opportunity to protest awardee's size status to the Small Business Administration (SBA) is academic because protester has in fact filed a size status protest that the SBA is now considering.

DECISION

Technology and Management Service, Inc. (TMS) requests reinstatement of its protest against award to Diversified Systems Resources, Ltd. (DSR) under request for proposal (RFP) No. DE-RF19-BC14129 issued by the Department of Energy for the acquisition of administrative and management support services. After the protest was filed, but before the filing of its protest report, the agency determined that the contract with DSR should be terminated and the performance work statement rewritten. We issued no decision on the merits of TMS' protest, finding it to be academic since the agency had already granted the requested relief.

On May 23, 1988, DSR protested the termination of its contract to the General Services Administration Board of Contract Appeals (GSBCA). By decision dated July 27, 1988, the GSBCA found that DOE had improperly terminated the contract and directed DOE to reinstate the award to DSR.

Since the GSBCA has directed the reinstatement of the award to DSR, TMS contends that its protest should also be reinstated. It is TMS' position that the GSBCA decision went to the single issue of whether the DOE termination for

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convenience was proper and is not dispositive of the fundamental issues raised in TMS' protest to this Office.^{1/}

In response to the protest filed by DSR with the GSBICA, DOE justified its decision to terminate the contract on the basis of several irregularities in the procurement process, the most serious being: (1) the failure to provide all proposed offerors the opportunity for a site visit; (2) inconsistent advice regarding location of a contractor's office; and (3) the failure to conduct meaningful discussions with TMS. In its decision, the GSBICA discussed all the principal allegations of irregularities and rejected them and considered the cumulative effects of the others to be insufficient to justify a termination for convenience on procedural grounds.

In its original protest filed with this Office, TMS listed a number of procurement irregularities which, in effect, challenged (1) the agency's failure to conduct meaningful discussions with TMS and (2) the agency's failure to provide the protester the opportunity to protest to the Small Business Administration (SBA) the size status of DSR.

With respect to the failure to conduct meaningful discussions, the GSBICA found that DOE had improperly failed to point out to TMS all of the weaknesses in its proposal, but also found this failure to have had no impact on the contract award. The GSBICA determined that even if TMS had been informed of the weaknesses which were not pointed out, and had revised its proposal to achieve the maximum possible technical scores with regard to those aspects of its proposal, TMS' total technical score would still have been significantly lower than DSR's. The GSBICA further found that given the relative standings of the two offerors in both the technical and cost areas, an award to DSR would still have been justified.

We have previously decided that once the GSBICA has exercised jurisdiction over a procurement, any protest to this Office involving the same procurement issue will be dismissed without consideration of the merits in deference to the binding effect of a GSBICA protest decision on the agency involved, subject to appeal to the United States Court of Appeals for the Federal Circuit. See Resource Consultants, Inc., 65 Comp. Gen. 72 (1985), 85-2 CPD ¶ 580. For us to proceed otherwise would, in effect, make us an appellate

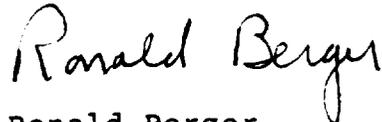
^{1/} TMS admits that some issues before the GSBICA were the same. However, without actually stating the issues not resolved by the GSBICA, TMS contends that there were other issues not disposed of by the GSBICA decision.

body reviewing the GSBICA's decision, a result inconsistent with the legislative intent of the Competition in Contracting Act of 1984, 31 U.S.C. § 3551-3556 and 40 U.S.C. 759(f) (Supp. IV 1986), the statutory basis for our jurisdiction and the Board's. See id.

Clearly, the central issue TMS has raised, the agency's failure to conduct meaningful discussions, has already been decided by the GSBICA. This issue, therefore, is not appropriate for consideration by our Office.

TMS' other basis of protest, concerning its denial of an opportunity to protest to the SBA the size status of DSR, is academic, since the agency has advised us that TMS has in fact filed a size status protest with the SBA that the SBA is now considering.

Under the circumstances, we decline to reinstate the protest.



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