



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John W. Gracey

File: B-232156.2

Date: January 23, 1989

DIGEST

Protest is dismissed as untimely where protest is filed 11 weeks after award, and protester allowed more than 4 months to expire without inquiry as to status of procurement; protester thus has not met its obligation of diligently pursuing the basis of its protest.

DECISION

John W. Gracey protests the rejection of its proposal as technically unacceptable, and the award of a contract to Grant Thornton under request for proposals (RFP) No. TC-88-001, issued by the International Trade Commission (ITC) for assistance in the development of a program to verify questionnaire data received in connection with ITC investigations. We dismiss the protest.

The solicitation was issued on March 25, 1988, with an April 25 closing date for receipt of initial proposals. The RFP stated the anticipated date of award as May 1. Six proposals were submitted, and after they were evaluated, a competitive range of two was established; Gracey's proposal was eliminated from the competitive range due to its low total point score relative to the scores of the other offerors. On May 3, Gracey called the ITC to inquire about the status of the procurement and was informed that no contract award had been made. Following negotiations, award was made to Grant Thornton on July 12.

On or about July 25, all offerors, including Gracey, were sent a letter dated July 19 notifying them of this award. Based on this notice, another unsuccessful offeror, GLH, Inc., protested the award, and by letter of August 2, all offerors were notified of the GLH protest. By letter of August 4, all offerors were notified of the ITC's decision not to stay performance of the contract while the GLH

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protest was pending, and on or about September 8, the ITC sent its report on the GLH protest to all offerors. On September 27, Gracey filed this protest challenging the evaluation of its proposal.

The ITC argues that the protest should be dismissed as untimely because Gracey knew or should have known of the contract award long before the protest was filed on September 27. Although the record indicates that the ITC letters of July 19, August 2, and August 4 may not have been received due to a change of address by Gracey, the ITC submits that Gracey's alleged lack of notice is most directly attributable to Gracey's failure either to contact the ITC at reasonable intervals after May 3 about the status of the procurement, or to inform the agency of its relocation and provide a forwarding address. On the merits, the agency takes the position that the Gracey proposal was evaluated in a reasonable manner, and rightfully eliminated from the competitive range.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or shown have been known. 4 C.F.R. § 21.2(a)(2) (1988). In addition, it is incumbent upon a protester to diligently pursue the information necessary to determine its basis of protest; the protester may not sit idly by simply awaiting notification of that information. American Electro-Coatings Corp., B-225417, Oct. 28, 1986, 86-2 CPD ¶ 487.

Here, even if Gracey never received the July 19, August 2, and August 4 letters, the fact remains that after its May 3 contact with the ITC, Gracey made no further inquiry about the status of the procurement, finally learning of the award only when it received the agency report on the GLH protest sometime after September 12. This delay of more than 4 months, in our view, was unreasonable. Although the award was not made by the May 1 date specified in the RFP, Gracey was responsible for keeping apprised of the award status after that date. This is particularly true, we think, in light of Gracey's changing its address without notifying the ITC of where to send procurement information; the agency's efforts to notify Gracey of the status of the procurement were rendered futile by this failure. We have held in similar circumstances that a delay of 4 months does not satisfy the requirement for diligent pursuit. See Greishaber Mfg. Co., Inc., B-222435, Apr. 4, 1986, 86-1 CPD ¶ 330; American Electro-Coatings Corp., B-225417, supra. The protest therefore is untimely.

In any case, it appears from the record that the ITC's evaluation and rejection of Gracey's proposal were reasonable. The ITC found that Gracey's proposal indicated limited auditing experience and no prior experience performing similar contracts; the project manager had some related experience, but had no experience on similar contracts, and no additional staff was proposed. Given that experience (40 percent) and key staffing (35 percent) were by far the most important factors under the RFP's evaluation scheme, we see nothing improper in the downgrading of Gracey's proposal on these bases. Gracey contends that the evaluation reflects bias on the part of the ITC; given that the evaluation appears to be reasonable, however, and since there is absolutely no evidence of bias on the agency's part, there is no basis for a conclusion that the evaluation reflects bias. See Fairchild Weston Systems, Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394.1/

The protest is dismissed.

Michael R. Isolden

for
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1/ Gracey complains that the ITC failed to notify the firm of its elimination from the competitive range. We regard such failure to be a procedural irregularity which does not affect the legality of the award. CSR, Inc., B-213058, Mar. 28, 1984, 84-1 CPD ¶ 364. This is particularly so in this case, where it appears the notification might not have been received in any event because of Gracey's change of address.