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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: tg Bauer Associates, Inc.--Reconsideration
File: B-229831.7
Date: March 2, 1989

DIGEST

1. General Accounting Office will not disturb procurement or contract unless there is some evidence that the protester, whether it be small business or not, would have been competitive, but for the contracting agency's actions, particularly where price is an important evaluation factor.
2. Protest involving specific arguments about alleged unreasonable Navy evaluation of each of the personnel resumes proposed by the protester is untimely filed under General Accounting Office (GAO) Bid Protest Regulations when first filed more than 2 months after offeror received all Navy evaluations of its personnel resumes. The fact that the specific arguments were first advanced at an informal GAO conference on protest and the comments thereon does not make the protester's piecemeal presentation timely under the Bid Protest Regulations.

DECISION

tg Bauer Associates, Inc., requests reconsideration of our decision in tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549, in which we denied the company's protest against the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00019-87-R-0059, issued by the Naval Air Systems Command for various support services.

We deny the request for reconsideration.

Bauer submitted a proposal in response to the RFP, which provided that award would be made to the lowest acceptable offeror. After several rounds of discussions and requests

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for best and final offers (BAFOs), Bauer's personnel proposal was found unacceptable. Award was made to the lowest priced, technically acceptable offeror.

In its protest, Bauer contended that the Navy conducted misleading discussions with the protester concerning its proposed personnel. Bauer argued that of the 24 key employee resumes termed unacceptable in a February 12, 1988, Navy letter to Bauer requesting a BAFO from the company, only 17 were actually rated unacceptable and that the Navy had actually assigned a rating of "marginal" to the remaining seven key personnel resumes (three proposed project managers, three senior analysts, and one analyst). Bauer argued that because it was mistakenly informed that these seven resumes were unacceptable, rather than marginal, Bauer needlessly substituted or downgraded personnel to its proposal's detriment and increased its proposed price. Bauer also contended the Navy did not inform Bauer of 10 unacceptable resumes in the junior analyst and technician categories. Finally, Bauer made a variety of contentions arising out of its review of the Navy evaluator work sheets used to evaluate Bauer's personnel.

Our review confirmed that the Navy misinformed Bauer that seven key employees were unacceptable, rather than marginal, and failed to inform Bauer that the junior analyst and technician personnel were unacceptable. We concluded in our December 2, 1988, decision, however, that even giving Bauer's proposal full credit for all these personnel, this would still not make Bauer's personnel proposal acceptable and, therefore, Bauer was not competitively prejudiced, such that its protest should be sustained. See B.K. Dynamics, Inc.--Reconsideration, B-228090.2, Feb. 18, 1988, 67 Comp. Gen. (1988), 88-1 CPD ¶ 165; DBA Systems, Inc., B-224306, Dec. 31, 1986, 86-2 CPD ¶ 722. Consequently, we denied these grounds of protest. As to the other grounds of protest, we found no basis to challenge the Navy's determination that Bauer's personnel proposal was unacceptable.

Bauer argues that we should reconsider our decision for two reasons. First, Bauer contends that as a small business, it was uniquely prejudiced by the Navy's misleading discussions concerning the seven key personnel since Bauer's resources "in general are limited and the on-hand personnel pool from which to draw is relatively small." Bauer alleges that based on the Navy's February 12 BAFO request, it unnecessarily expended resources within a short timeframe in search of personnel to fill positions for which it believed it had submitted unacceptable candidates. Consequently,

Bauer contends, we should have found that Bauer was competitively prejudiced by the Navy's improper discussions and should have sustained the company's protest.

Although Bauer claims that its personnel proposal could have been evaluated as acceptable if it had devoted its limited resources in the short time after the final request for BAFOs to improving its proposed personnel resources, instead of "frantically and unnecessarily restructur[ing] its personnel mix" based on the misleading discussions, we find Bauer's allegations in this regard both speculative and self-serving. That is, Bauer's personnel proposal was unacceptable even assuming all the personnel, which were mislabeled or not mentioned by the Navy during discussions, were found fully acceptable. Bauer does not specify how it would have so improved the rest of its unacceptable personnel proposal, such that it could be found acceptable.

As indicated in our prior decision, we will not disturb a procurement or contract unless there is some evidence that the protester, whether it be small business or not, would have been competitive but for the contracting agency's actions, particularly where, as here, price is an important evaluation factor. B.K. Dynamics, Inc.--Reconsideration, 67 Comp. Gen. supra; DBA Systems, Inc., B-224306, supra. Bauer's contentions here do not constitute "some evidence" that it suffered competitive prejudice. Bauer takes issue with the "mathematical approach" taken in our decision in determining that Bauer was not prejudiced. However, we have consistently utilized this method to ascertain whether an offeror has been competitively prejudiced by an agency failure to conduct complete or meaningful discussions. See e.g., Levine Assocs., Inc., B-228543, Feb. 5, 1988, 88-1 CPD ¶ 117, and Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94. Based on foregoing, Bauer's first basis for reconsideration has no merit.

Bauer's second basis for requesting reconsideration is that we did not consider Bauer's specific arguments as to the alleged acceptability of each of Bauer's finally submitted resumes (24 in all) for key personnel. Bauer contends that the Navy evaluator did not recognize that Bauer had substantially revised its personnel resumes in its final BAFO, and that it was improper for the Navy not to have revised its unacceptable ratings for all of these resumes based on Bauer's last submitted information.

The specific arguments involving the 24 resumes were first filed with our Office on September 22, 1988, after a bid protest conference held on September 14, 1988. This was

considerably after the date (July 13, 1988) on which Bauer admits it came into possession of all the Navy's evaluation worksheets on its finally submitted resumes. Consequently, these contentions are untimely filed with our Office under our Bid Protest Regulations, since they were first raised more than 10 working days after Bauer's basis for protest was known. 4 C.F.R. § 21.2(a)(2) (1988). Our regulations do not permit the piecemeal development of a protest, where, as here, there is no reason the protester could not have earlier raised the contentions. See JWK International Corp.; tg Bauer Assocs., Inc., B-229831.4, B-229831.5, Sept. 29, 1988, 88-2 CPD ¶ 298.

Bauer excuses its late filing by contending the specific discussion of the resumes was "requested" by the General Accounting Office (GAO) at the bid protest conference on this protest.^{1/} At the conference, the GAO attorney informed Bauer that the reasonableness of the Navy's evaluation of Bauer's final resumes was a more cogent issue than the issues Bauer had previously raised at length about the Navy's methods used in documenting those evaluations on its worksheets. However, Bauer, who was aware of the facts on which these allegations were based more than 2 months earlier, should have known that any new objections raised about the resumes would be reviewed as to whether the objections were timely filed under our Bid Protest Regulations. See JWK International Corp.; tg Bauer Assocs., Inc., B-229831.4, B-229831.5, supra at 3-4, which involved an earlier Bauer protest of this procurement, where Bauer raised new contentions at the bid protest conference and the comments thereon, which we dismissed as untimely filed under our Bid Protest Regulations.

^{1/} The conference, held at the protester's request, was informal in nature and did not provide for formal procedures such as transcripts, sworn testimony, or cross examination. This type of conference is only for the purpose of an informal oral exchange of the parties and has no binding effect on any of the parties as to issues of law or fact discussed. See Cumberland Sound Pilots Association--Request for Reconsideration, B-229642.2, June 14, 1988, 88-1 CPD ¶ 567; H.L. Carpenter Co.--Reconsideration, 65 Comp. Gen. 184, 86-1 CPD ¶ 3. Contrast 4 C.F.R. § 21.5(b) (GAO's fact finding conference).

As Bauer has not presented evidence that our original decision was based on factual or legal error, see 4 C.F.R. § 21.12(a), we deny its request for reconsideration.

for Seymour E. Hinchman
James F. Hinchman
General Counsel