

L. Glass



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Rantec Microwave & Electronics, Inc.--
Reconsideration

File: B-241151.2

Date: February 28, 1991

Kenneth B. Weckstein, Esq., and Constance A. Wilkinson, Esq., Epstein Becker & Green, P.C., for the protester. Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of dismissal of protest by firm not in line for award if protest were sustained is denied where all offerors included in the competitive range were considered technically equal and award was made to low, technically acceptable offeror. Since the protester was the third low acceptable offeror and did not challenge the acceptability of the second low offeror, protester does not have the direct economic interest in the contract award to be considered an interested party under General Accounting Office's Bid Protest Regulations.

DECISION

Rantec Microwave & Electronics, Inc. requests reconsideration of our prior dismissal of its protest against the award of a contract to JTP Radiation, Inc. under request for proposals (RFP) No. DTFA01-88-R-06530, issued by the Federal Aviation Administration (FAA) for the acquisition of tactical air navigation (TACAN) antennas. Rantec Microwave & Elec. Inc., B-241151, Dec. 20, 1990, 90-2 CPD ¶ 510.

We deny the request for reconsideration.

In its initial protest, Rantec argued that the mechanically-rotating antenna proposed by JTP was incapable of meeting certain material requirements of the RFP, and thus JTP's proposal should have been rejected as unacceptable. Rantec also argued that the FAA's evaluation failed to reflect the significant disparity in technical merit of the JTP and Rantec proposals. According to Rantec, since the FAA's evaluation understated the technical inferiority of JTP's proposal, the finding of technical equality between the two

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firms and the award on the basis of lowest price was unreasonable. Finally, Rantec also contended that JTP failed to meet definitive responsibility criteria contained in the RFP.

We dismissed the protest based on the FAA report which showed that Rantec was the third low offeror and not next in line for award. The record showed that the four offerors in the competitive range were determined to be technically equal. Among these four offerors, the awardee submitted the low offer, another firm submitted the second low offer, and Rantec submitted the third low offer. The second low offeror, like Rantec, offered an electronically-rotated antenna, and had only a slightly lower overall technical score than Rantec. In fact, all but the low offeror proposed an electronic antenna. Thus, even if Rantec's protest were sustained, the second low offeror, not Rantec, would be in line for award since it also submitted a technically equal proposal offering to supply an electronically-rotated antenna at a lower price than Rantec's.

Under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1990), a party must be "interested" in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of a party's status in relation to a procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Bid Protest Regulations. See Automated Servs., Inc., B-221906, May 19, 1986, 86-1 CPD ¶ 470; Brunswick Corp. and Brownell & Co., Inc., B-225784.2 et al., July 22, 1987, 87-2 CPD ¶ 74. A party will not be deemed interested where it would not be in line for the protested award even if the protest were sustained. See id.

Since Rantec did not challenge the acceptability or technical equality of the second low offeror's proposal, we had no reason to believe that Rantec would be in line for award if its protest were sustained.^{1/}

Rantec, in its reconsideration request, admits that the allegations and discussions in its initial protest concerned deficiencies in JTP's proposal that made the source selection

^{1/} Rantec argues that one of the alternative remedies it requested in its initial protest was that the FAA resolicit and reevaluate proposals from the original offerors. The fact that resolicitation is requested as an alternative remedy is irrelevant where there is an intermediate party of greater interest than the protester that would be in line for award without any need for resolicitation even if the protest were sustained.

official's (SSO) conclusion allegedly unreasonable. Rantec now argues that the unreasonableness of the SSO's conclusion with regard to JTP's proposal makes his entire conclusion unreliable. Rantec maintains that its protest was a challenge to the SSO's decision in its entirety, not just with respect to JTP's proposal, and points out that under a cost/technical tradeoff that was required to be performed, its proposal may well have been in line for award.

In its initial protest, Rantec stated that the SSO's conclusion that the proposals were technically equivalent was unreasonable because "JTP's proposal was not only markedly inferior to that of Rantec, it was unacceptable in that it failed to comply with numerous material specification requirements." Rantec also stated that the selection decision was arbitrary because the "cost/technical tradeoff the SSO made was based on a vast understatement of the technical merit of Rantec's proposal in comparison to the technical merit of JTP's proposal." Rantec further stated that a "mechanically-rotating antenna is incapable of meeting numerous requirements of the RFP." Rantec discussed in detail the specifications it alleged JTP could not meet with its proposed antenna. Clearly, Rantec in its initial protest was specifically challenging the acceptability of JTP's proposal and the capability of a mechanical antenna in general rather than asserting a general challenge to the agency's evaluation and selection decisions. Thus, its general challenge to the evaluation constitutes a new contention which should have been raised in its original protest. Moreover, as Rantec did not allege the existence of any meaningful difference between its proposal and that of the second low offeror, there was no reason to consider what the results of a cost/technical would be since on the record the two proposals were essentially equal in the FAA's view and therefore award would be made on the basis of price. See, e.g., Cobro Corp., B-228410, Dec. 16, 1987, 87-2 CPD ¶ 600.

Our Bid Protest Regulations are designed to give protesters and interested parties an opportunity to present their cases with the least disruption possible to the orderly and expeditious process of government procurements. Dynalectron Corp. 65 Comp. Gen. 92 (1985), 85-2 CPD ¶ 634. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties' arguments on a fully

developed record--and cannot justify reconsideration of our prior decision. The Dep't of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel