



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

Decision

Matter of: Labat-Anderson Incorporated

File: B-246071.5

Date: August 31, 1992

David T. Ralston, Esq., Leonard, Ralston, Stanton & Danks, for the protester.
Robert A. Mangrum, Esq., and Joan G. Ochs, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Chemonics International, an interested party.
Robert Sonenthal, Esq., Agency for International Development, for the agency.
Susan K. McAuliffe, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest based on information allegedly acquired months after initial protest was filed is untimely, where, in addition to protester's failure to diligently pursue information revealing the additional protest contentions, which is alone sufficient to dismiss protest, protest was filed more than 10 working days after the date protester admits obtaining sufficient information to establish its basis of protest.

DECISION

Labat-Anderson Incorporated protests the award of a contract to Chemonics International by the Agency for International Development (AID) under request for proposals (RFP) No. 91-003 for technical assistance to establish and operate the Black Integrated Commercial Support Network (BICSN) program in South Africa.¹ The protester alleges that Chemonics' proposal failed to meet the RFP requirements regarding the position of Chief of Party. The protester specifically contests the veracity of the stated qualifications of the awardee's candidate for that position as presented in Chemonics' proposal.

We dismiss the protest as untimely.

¹The RFP explained that the purpose of the BICSN project was "to increase the rate of economic empowerment of disadvantaged South Africans by developing and nurturing promising enterprises within the black business community."

This protest, filed on July 30, 1992, is Labat-Anderson's fifth protest concerning this procurement. The firm initially filed a protest on October 4, 1991, challenging certain aspects of the agency's evaluation of proposals, and supplemented that protest with additional contentions on December 5. Although Labat-Anderson did not specifically challenge the evaluation of Chemonics' proposed COP, in the agency's November 20 report submitted in response to the initial protest, the protester was given a copy of the awardee's proposal (under a protective order issued by our Office) which included the resume of and other biographical information about that individual. We sustained Labat-Anderson's initial protest on February 18, 1992, and recommended that AID request another round of best and final offers (BAFO) from Chemonics and Labat-Anderson. Labat-Anderson protested the agency's reevaluation of proposals on April 17, and supplemented that protest with additional protest contentions on June 10--none of the protester's prior submissions, however, challenged the awardee's COP candidate.

The RFP provided that the offeror's proposed COP's experience would be evaluated, among other things, for his "track record of past enterprises assisted and of the venture capital . . . institutions . . . in which (he) . . . had a management role." The proposed COP's management experience was to be emphasized in the evaluation as well as the "ability to demonstrate successful disadvantaged business development, with a venture capital orientation." The protester essentially contends that the awardee's proposal failed to accurately state the proposed COP's prior relevant work experience (mainly the financial failure of a company with which the proposed COP had been associated), which information, the protester believes, would have adversely affected the awardee's technical evaluation.

The agency requests the dismissal of Labat-Anderson's current protest on the ground that the protester has improperly presented these additional issues in a piecemeal fashion. AID contends that the protester failed to diligently investigate all of its possible bases of protest against the evaluation of proposals, namely its current allegations against the proposed COP, even though the protester has had the challenged biographical information since November 20, 1991. AID also contends that this protest is untimely because it was filed more than 10 working days from the protester's receipt of the agency's report in response to its protest of the reevaluation of proposals (in which the protester was given a copy of the

awardee's second BAFO confirming the offer of the same COP candidate.) AID further contends that the protest was filed more than 10 working days from the time Labat-Anderson allegedly obtained information sufficient to state a basis of protest against the COP's stated qualifications.

The RFP required biographical information regarding the proposed COP, including his employment history for at least the last 3 years. The awardee's proposed COP's resume cites his employment experience as "President/CEO" of a firm identified as "Dimpex, Inc., Washington D.C.", from "1966 to present", and Chemonics' proposal elsewhere lists the position of "President/CEO for "Dimpex", at a New York address, from "1965 to present" (this information was certified to as late as March 4, 1992.) On July 2, the protester allegedly learned from a Dunn & Bradstreet report that Dimpex Associates, Inc., had been placed in bankruptcy in New York. The protester also allegedly learned at that time that no Dunn & Bradstreet report existed for "Dimpex, Inc."

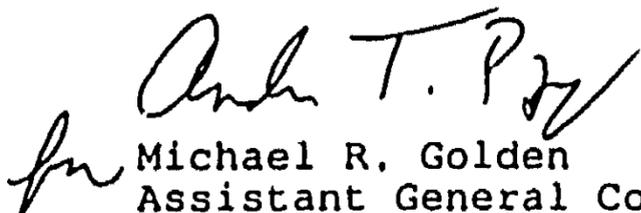
Labat-Anderson's attorneys then initiated an investigation to confirm whether Dimpex Associates, Inc., was the same entity as Dimpex, Inc. A bankruptcy file obtained by the protester's attorney on July 16, confirmed the Dunn & Bradstreet report that Dimpex Associates, Inc., was placed in bankruptcy in 1989. The protester's further investigation allegedly revealed that Dimpex, Inc. and Dimpex Associates, Inc., were in fact the same entity. The protester filed its current protest on July 30, 1992, claiming the COP misrepresented his prior experience on his resume by failing to state his relevant association with a financially troubled firm.

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the procurement process. See Amerind Constr. Inc.--Recon., B-236686.2, Dec. 1, 1989, 89-2 CPD ¶ 508. Accordingly, our Bid Protest Regulations, 4 C.F.R. Part 21, contain strict timeliness requirements for filing protests. Under our Regulations, a protest must be filed within 10 working days of when the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1992). Separate grounds of protest asserted after a protest has been filed must independently satisfy the timeliness requirements of our Regulations. See Central Texas College, B-245233.5, Feb. 6, 1992, 92-1 CPD ¶ 151. To ensure those timeliness requirements are met, a protester challenging an award on one basis has an affirmative obligation to diligently pursue information which may reveal additional grounds of protest. Diemaster Tool, Inc., B-238877.3, Nov. 7, 1990, 91-1 CPD ¶ 162.

We cannot find that Labat-Anderson's current protest was timely filed. Here, Labat-Anderson received the awardee's proposal and thus knew of Chemonics' proposed candidate for the COP position, and his stated qualifications, in November 1991. Despite the protester's contention that it had no reason to question the veracity of the awardee's proposed COP's stated qualifications until it learned from its May 28 receipt of the agency's report in response to its April 17 protest that "extra record" information could be considered by the agency in its technical evaluation of the proposals, we believe it was incumbent upon the protester to fully investigate any bases of protest it may have against the qualifications of Chemonics' personnel in a diligent fashion as soon as Labat-Anderson first received Chemonics' proposal. See Central Texas College, supra. We cannot find that the protester's delay until June 1992 to begin to investigate Chemonics' personnel was reasonable.

We also find that Labat-Anderson failed to timely file its protest from the time its own admissions show it learned its basis of protest. Here, at the latest, Labat-Anderson learned on July 2 that a company with which the awardee's proposed COP had been associated (in fact, he was the listed president of that company) which had provided similar services to AID within the last 3 years had experienced financial difficulties (and, in fact, had been placed in bankruptcy), but that such information was not included in the awardee's proposal. Even if Labat-Anderson had otherwise diligently investigated its basis of protest, the protester was required to protest the adequacy of Chemonics' presentation of its COP's experience, at the latest, within 10 working days of learning of that information. Instead, the protester waited at least until a month after that time to file its protest, apparently, in an effort to obtain extraneous information to confirm that Dimpex, Inc. and Dimpex Associates, Inc. were the same entity. This additional information would have, at best, merely supported Labat-Anderson's actual basis of protest which, the protester's admissions show, arose at least a month earlier--i.e., that the Chemonics' proposed COP allegedly misrepresented his experience by omitting potentially damaging information regarding his past business experience.

The protest is dismissed.


for Michael R. Golden
Assistant General Counsel