



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alascom, Inc.--Reconsideration

File: B-250407.3

Date: March 12, 1993

John F. Bradach, Esq., and Ronald W. Messerly, Esq., Stoel, Rives, Boley, Jones & Grey, for the protester.
Karl Dix, Jr., Esq., Smith, Currie & Hancock, for Signal Communications System and Supply, Inc., an interested party.
H. Jack Shearer, Esq., Defense Information Systems Agency, for the agency.
Beha Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest by firm not in line for award if protest were sustained is affirmed where record does not support protester's contention that the contracting agency treated awardee and protester unequally with regard to evaluation of alternate proposals.

DECISION

Alascom, Inc. requests reconsideration of our prior decision, Alascom, Inc., B-250407; B-250407.2, Oct. 22, 1992, 92-2 CPD ¶ 273, dismissing its protest against the award of a contract to Signal Communications System and Supply, Inc. (SIGCOM) under request for proposals (RFP) No. DCA200-92-R-0046, issued by the Defense Information Systems Agency (DISA) for digital long-haul command and control communication links between various communication sites located in the United States, Guam, Japan, and Korea.¹

We affirm our dismissal.

The RFP was issued on January 6, 1992. Initially, the agency required offerors to base their proposed communications links on the International Satellite System (INTELSAT); however, by amendment No. 0009, issued April 14, offerors were "encouraged to submit alternate proposals utilizing . . . the Tracking and Data Relay Satellite

¹This system is collectively referred to as the Pacific Consolidated Telecommunications Network (PCTN).

System (TDRSS) in lieu of . . . (INTELSAT)."² With respect to contract award, the solicitation provided that award would be made to the "lowest price[d], responsive, responsible offeror."

By the May 8 closing date, seven proposal packages containing nine proposed technical "solutions" were received; on May 23, two of these proposed solutions were rejected as technically unacceptable since one--submitted by GE Americom as an "alternate"--was based on the PanAm satellite, and the other--submitted by Alascom as an "alternate"--did not contain sufficient technical documentation.

The remaining six proposal packages--containing the following proposed solutions--were ranked as follows, in descending order of price³:

| <u>Offeror</u> | <u>Proposed Satellite Solution</u> |
|-------------------|------------------------------------|
| SIGCOM | TDRSS |
| SIGCOM | INTELSAT |
| GE Americom | TDRSS |
| GE Americom | INTELSAT |
| IDB International | INTELSAT |
| Alascom | INTELSAT |
| ARS | INTELSAT |

After conducting two rounds of discussions, and receiving each offeror's best and final offer (BAFO), the contracting officer found each of the above proposed solutions to be technically acceptable; in this regard, the relative ranking of offerors according to their proposed prices remained the same. On September 10, DISA awarded a contract to SIGCOM as the lowest priced offeror based on its proposed TDRSS solution.⁴

On September 18, Alascom filed a protest with this Office alleging that SIGCOM's proposal was improperly based on the use of the TDRSS satellite and contending that SIGCOM lacked

²In January 1992, the Columbia Communications Corporation inaugurated private commercial satellite service over the Pacific Ocean enabling offerors to potentially access the TDRSS satellite for this requirement.

³The agency has asked this Office not to release the proposal prices.

⁴SIGCOM offered the same price for both the TDRSS and INTELSAT solutions.

the permits necessary to access the satellite.⁵ On September 25, in an effort to persuade Alascom to withdraw its protest, DISA provided Alascom with an explanation of the award decision as well as a copy of several pages from the SIGCOM, GE Americom and IDB International proposals.⁶ After receiving these documents, Alascom filed a supplemental protest on October 8 which--as discussed below--was based on a new allegation that SIGCOM had improperly proposed its primary TDRSS solution and alternate INTELSAT solution in the same proposal package, in contravention of the requirements of the RFP.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1992). Where there is another party that has a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Regulations. See U.S. Defense Sys., Inc., B-248928, Sept. 30, 1992, 92-2 CPD ¶ 219; Telos Corp., B-246177, Jan. 13, 1992, 92-1 CPD ¶ 61. In this case, the record showed that even if we determined that the contract was improperly awarded to SIGCOM, two other offerors--GE Americom and IDB International--preceded Alascom in eligibility for award. Since Alascom would not be in line for award even if its protests were sustained, we dismissed the protests. See Alascom Inc., supra.

On reconsideration, Alascom "does not deny that it was not the second-low bidder." However, Alascom contends that our prior dismissal should be reversed because our conclusion that Alascom would not receive a contract award in the event its protests were sustained was erroneously based on a "mischaracteriz[ation]" of SIGCOM's proposal. Specifically, Alascom maintains that while we interpreted SIGCOM's proposal submission as two separate proposals--one based on TDRSS and one based on INTELSAT--in fact--as interpreted by Alascom--SIGCOM's submission constituted only one technical

⁵In this regard--as incorporated by amendment No. 0009--the solicitation provided that "(n)ecessary approvals and permits required . . . for international satellite service using TDRSS must be provided by offerors prior to award of a contract, but need not be provided with the alternate proposal submission."

⁶On September 24, this Office issued a protective order; these documents were provided to Alascom under that order.

proposal which improperly proposed both satellite solutions in the same document. In this regard, Alascom contends that "the fact that SIGCOM submitted only one proposal utilizing two satellites is significant, because such a proposal violates Section L, Paragraph 10, of the RFP," which provides in relevant part:

"a. An offeror may submit more than one proposal presenting significantly different basic approaches, provided each proposal submitted meets the mandatory requirements set forth herein. Minor variations in approaches are not considered significantly different approaches.

"b. If alternate proposals are submitted, each proposal must be (1) clearly labeled and identified on the cover of each separate document therein, (2) prepared in accordance with the preparation format instructions contained in paragraphs 5 and 6 of this section, and (3) submitted concurrently with the offeror's basic proposal. . . . Each alternate proposal submitted meeting the above criteria will be separately evaluated in accordance with the criteria set forth in Section M."

According to Alascom, because these provisions prohibit offerors from submitting two technical solutions in one proposal package, and because the agency proceeded to accept and evaluate SIGCOM's proposal notwithstanding the fact that SIGCOM presented both its TDRSS and INTELSAT approaches in the same document package, the agency's actions demonstrate an "unfairness and inconsistency of application of the RFP evaluation provisions" which prejudiced the competition for this requirement. In this regard, Alascom contends that it was treated unequally because the agency rejected Alascom's alternate proposal on the ground that it "did not meet the requirements of Section L" set forth above. As a result, Alascom maintains that in the event its protests were sustained, the agency's improper evaluation actions would warrant cancellation and resolicitation of the requirement, thereby rendering Alascom an interested party to maintain its award challenge. See Autom. Mgmt. Consultants Inc., B-243805, Aug. 29, 1991, 91-2 CBP 213.

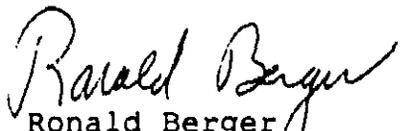
While Alascom is an interested party to raise the issue of unequal treatment, Alascom's contention that the agency acted improperly by accepting SIGCOM's "alternate proposal" while rejecting Alascom's is simply without merit.

Reasonably interpreted, section L of the RFP is intended to ensure that offerors submit documentation adequate on its face to demonstrate each proposed technical solution and

provide the agency with a sufficient basis from which to evaluate that solution. Although Alascom asserts that the agency's rejection of its alternate proposal submission was based on Alascom's failure to provide it as a separate package as directed by section L, the record does not support this assertion; rather, as evidenced by the contracting officer's May 23 letter, Alascom's alternate proposal was rejected because it consisted solely of an alternate pricing arrangement, and did not contain any further technical explanation--such as the specifically requested "Volume I, Proposal Summary, Volume III, Technical Proposal, or Volume IV, Management Proposal." In contrast, although SIGCOM's alternate technical INTELSAT solution was built into the structure of the primary TDRSS proposal document--as a back-up approach in the event the necessary permits for using TDRSS were not acquired--the details of the alternate INTELSAT approach were clearly explained in the appropriate four-volume format and identified as the "alternate solution."⁸ Unlike Alascom's undocumented alternate proposal submission, based on the details set forth in SIGCOM's proposal submission, the government "was easily able to evaluate the technical sufficiency" of SIGCOM's "basic" and "alternate" solutions.

Under these circumstances, Alascom's contention that the agency treated it and SIGCOM unequally simply does not state a valid basis for protest.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel

⁷Paragraph 5 of section L, "INSTRUCTIONS FOR PREPARATION OF OFFERS," directed offerors to submit their proposals in four volumes: Proposal Summary (Volume I), Price Proposal (Volume II), Technical Proposal (Volume III), and Management Proposal (Volume IV).

⁸The record shows that the agency posed a question to SIGCOM during discussions about the need for permits to use TDRSS and SIGCOM's obligation to use INTELSAT if the permits were not obtained. Alascom characterizes this as "secret" negotiations and offers it as evidence of improper action by the agency. In fact, the agency merely engaged in discussions with SIGCOM--as it did with the other offerors, including Alascom--concerning the details of its technical proposal. Any suggestion of impropriety by the agency in this regard is unwarranted.