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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates--Reconsideration

File: B-253329.2

Date: April 12, 1994

Jack Faucett for the protester.
Barbara C. Coles, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision contains errors of fact or law or to present information not previously considered that warrants reversal or modification of decision; neither repetition and disagreement with decision nor advancement of argument that could have been raised during consideration of initial protest meet this standard.

DECISION

Jack Faucett Associates requests reconsideration of our decision, Jack Faucett Assocs., B-253329, Sept. 7, 1993, 93-2 CPD ¶ 154, in which we denied Faucett's protest challenging the Department of Transportation's exclusion of its proposal from the competitive range under request for proposals (RFP) No. DTRS-57-92-R-00026. Faucett contends that our decision erred in concluding its initial cost proposal required major revision in order to be acceptable.

We deny the request for reconsideration.

The RFP, issued on April 1, 1992, required offerors to prepare cost/business proposals in sufficient detail to permit thorough and complete evaluation without additional correspondence or communication. The agency advised offerors that their proposed costs would be evaluated generally to determine whether they were fair, reasonable, and realistic. The RFP stated that the agency would evaluate the offerors' respective business/management approaches in terms of overall reasonableness, clarity, and quality.

Based on the agency's evaluation of Faucett's cost proposal, the source evaluation board (SEB) unanimously voted to exclude Faucett's proposal from the competitive range. This decision was based on the SEB's conclusion that Faucett failed to provide consistent staffing between the technical and the cost proposals, as well as the determination that Faucett's cost proposal failed to include the required completed schedules and narratives so that rewriting the proposal would be necessary to make it acceptable.

In its protest, Faucett argued that the agency's determination that its proposal was outside the competitive range because of informational deficiencies was improper. Although Faucett conceded that its proposal was deficient, it argued that the deficiencies were minor and readily correctable. According to Faucett, the minor nature of the deficiencies was evidenced by its ability to provide the agency additional information addressing the proposal's shortfalls within 8 business days after being advised of them. The protester also contended that the agency should have held discussions with the firm, rather than concluding that the firm needed to rewrite its proposal to be acceptable.

Our prior decision on this protest pointed out that an agency is not required to include an offer in the competitive range when the proposal, to be acceptable, would have to be revised to such an extent that the revised proposal would be tantamount to a new proposal. See Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. We also noted that even where individual deficiencies may be susceptible to correction through discussions, the aggregate of many such deficiencies may preclude an agency from making an intelligent evaluation; the agency is not required to give the offeror an opportunity to rewrite its proposal under such circumstances. Ensign-Bickford Co., B-211790, Apr. 18, 1984, 84-1 CPD ¶ 439.

We concluded that the agency's exclusion of Faucett's proposal was proper because the cumulative effect of the omissions and conflicting information in the proposal would have required major revision in order for the proposal to be acceptable. The record showed that Faucett's proposal failed to: (1) establish the basis for its proposed direct labor and indirect rates despite the fact that offerors were required to submit documentation to support their rates and methodology; (2) state whether uncompensated overtime was included in the proposal, and, if included, provide an assessment of the impact of such uncompensated overtime on the proposed rates; (3) provide detailed information to support its stated escalation rates; and (4) include information about the escalation rates of some of Faucett's subcontractors.

In addition to these information deficiencies, the record showed, and Faucett did not refute, that Faucett's proposal contained the following inconsistencies: (1) the total price listed for the first option period on Faucett's contract pricing proposal differed from the total price listed on its cost summary; (2) the information Faucett provided about the distribution of contract labor years and labor hours between it and its proposed subcontractors differed from the information provided by the subcontractors; and (3) the number of employees Faucett identified in its technical proposal was significantly lower than the number listed in its cost proposal.

In its request for reconsideration, Faucett argues that alleged factual errors by our Office warrant reversal of our prior decision. To support its allegation, Faucett argues that we improperly relied on the agency's justifications for excluding its proposal and that we failed to hold a hearing to determine, among other things, whether a rewrite of its cost proposal was necessary in order for the firm to be considered acceptable.

In expressing disagreement with our decision, Faucett essentially repeats several of its original arguments which we have already considered and rejected. For example, Faucett maintains--as it did originally--that some of the informational deficiencies (including Faucett's failure to state its projected escalation rate and the absence of its subcontracting plan, uncompensated overtime rates, and purchasing plan) were minor and readily correctable in a short time period. Our decision pointed out that, contrary to the protester's suggestion, the time necessary to furnish information originally omitted from an offeror's proposal is not determinative of whether the omitted information is material.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1993). Faucett's repetition of arguments made during our consideration of the original protest and continued disagreement with our conclusion concerning the materiality of these informational deficiencies does not provide a basis for us to reconsider our prior decision. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Although Faucett's protest failed to dispute the agency's determination that the number of employees Faucett proposed to comprise the staff for its technical proposal was

significantly lower than the number listed in its cost proposal, Faucett now argues, for the first time, that the inconsistency in its staffing levels was not material. According to Faucett, the inconsistency resulted from the fact that its technical proposal included resumes for only senior and middle-level staff, as required by the RFP.

In order to provide a basis for reconsideration, information not previously considered must have been unavailable to the party seeking reconsideration when the initial protest was being considered. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. A party's failure to make all arguments 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 the parties' argument on a fully developed record--and cannot justify reconsideration of our prior decision. Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Since Faucett could have raised this argument in its comments to the agency report submitted in the initial protests, Faucett has not provided a basis for us to reconsider our prior decision. See id.

Faucett next argues that our Office erred in deciding not to hold a hearing in this case. Generally, a protester's disagreement with our decision to deny a hearing request during the course of a protest is not per se a ground for reconsideration of the decision on the merits. Since the decision of whether to convene a hearing usually does not relate directly to claimed errors of law or fact in the prior decision, or information not previously considered, the decision not to hold a hearing does not meet the standard for reconsideration set out in our Bid Protest Regulations, 4 C.F.R. 21.12(a); see Mine Safety Appliances Co.--Recon., B-242379.4, Apr. 24, 1992, 92-1 CPD ¶ 389.

Pursuant to our regulations, 4 C.F.R. § 21.5(a), our Office, within its discretion, may choose to convene a hearing to develop the record in a bid protest through oral arguments and/or oral testimony. As a general rule, we conduct hearings where there is a factual dispute between the parties which cannot be resolved without oral examination or without assessing witness credibility, or where an issue is so complex that developing the protest record through a hearing is more efficient and less burdensome than proceeding with written pleadings only. Border Maintenance Serv., Inc.--Recon., 72 Comp. Gen. 265 (1993), 93-1 CPD ¶ 473. Absent evidence that a protest record is questionable or incomplete, this Office will not hold a bid protest hearing merely to permit the protester to orally reiterate its protest allegations or otherwise embark on a fishing expedition for additional grounds of protest since

such action would undermine our ability to resolve protests expeditiously and without undue disruption of the procurement process. See id.

Here, the record was replete with evidence, including the protester's own acknowledgment of its informational deficiencies, that the agency was unable to determine whether Faucett's and its subcontractors' rates were reasonable and realistic. For example, Faucett submitted a detailed appendix to its protest submissions which stated that its proposal contained at least 22 deficiencies. Given these uncontested deficiencies alone, as well as others in the record, our Office needed no hearing to conclude that the agency properly excluded Faucett's proposal from the competitive range.

Finally, Faucett contends that the agency's decision to award eight contracts to large businesses under the solicitation supports its original argument that the agency's evaluation was improper because the agency was biased against small businesses.[1] Our Bid Protest Regulations, 4 C.F.R. Part 21 (1993), contain strict timeliness requirements for filing protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest; whichever is earlier. 4 C.F.R. § 21.2(a)(2); Munford, Munford & Assocs., B-244803, Sept. 20, 1991, 91-2 CPD ¶ 263. The record indicates that Faucett was sent a copy of the agency's award letter dated August 26, 1993. For purposes of calculating timeliness, absent evidence to the contrary, we assume that mail is received within 1 calendar week from date it is sent. See New Beginnings Treatment Ctr., Inc.--Recon., B-252517.2; B-252517.3; Apr. 29, 1993, 93-1 CPD ¶ 349. Thus, we impute that the protester received the award notification no later than September 2. Faucett's request for reconsideration was

[1]In its original protest, Faucett initially argued that the agency's evaluation was improper because it was biased against small business contractors. The agency rebutted these arguments in its agency report. The protester, in its comments on the agency report, did not address these issues; therefore, we considered them abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

filed October 1, which is more than 10 working days later. Therefore, we consider Faucett's new protest basis to be untimely filed.

The request for reconsideration is denied.

for Robert P. Murphy
Acting General Counsel