151848

Comptroller General
of the United States

122696

Washington, D.C. 20548

Decision

Matter of: Colonial Storage Company--Reconsideration

File: B-253501.8

Date: May 31, 1994

Michael R. Charness, Esq., and Alice M. Crook, Esq., Howrey & Simon, for the protester.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office (GAO) denies a protester's request for reconsideration of a decision denying its protest because GAO found that there was no reasonable possibility that the protester was prejudiced by the agency's failure to reasonably evaluate proposals under the solicitation's best value evaluation scheme, where the record did not establish that the protester's substantially higher-priced proposal was technically superior to the lower-priced proposals and the protester failed to use information in the record to present credible and specific evidence that it was prejudiced.

DECISION

Colonial Storage Company requests reconsideration of our decision, Colonial Storage Co.; Paxton Van Lines, Inc., B-253501.5 et al., Oct. 19, 1993, 93-2 CPD ¶ 234, denying its protest of multiple awards and proposed awards under request for proposals (RFP) No. 0000-225073, issued by the Department of State for export moving and storage services.[1]

We deny the request for reconsideration.

---

[1]The RFP re sted proposals for both export and inbound services. Colonial submitted a proposal for export services and its protest concerns the rejection of its proposal for those services. In the prior decision, we sustained the protest of another unsuccessful offeror, Paxton Van Lines, Inc., concerning the rejection of its proposal for both export and inbound services.

Colonial and Paxton essentially alleged that proposals were improperly and unreasonably evaluated with inadequate documentation to support awards under the RFP "best value" evaluation scheme, which allotted greater weight to technical factors than to price, and that State actually made the award selections on the basis of lowest-priced, technically acceptable offerors.[2] We agreed and sustained in part Paxton's protests, but denied Colonial's protests, finding that Colonial was not prejudiced by State's actions. In this regard, Colonial had proposed a very high price ($17,224,255) as compared to the prices of seven selected offerors (which ranged from $9,115,604 to $13,156,981) as well as four of the nonselected offerors (whose prices ranged from $13,507,719 to $14,845,687). We found that Colonial did not show that there was a reasonable possibility that it would have been selected for award under a proper evaluation even though the agency had asserted this defense. Colonial disagrees with our conclusion that it did not show the possibility that it was prejudiced by the improper evaluation.

Competitive prejudice is an essential element of every viable protest. Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Where an agency clearly violates procurement requirements, a reasonable possibility of prejudice is a sufficient basis for sustaining a protest and we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester. Foundation Health Fed. Servs., Inc.; Qual/Med Inc., B-254397.4 et al., Dec. 20, 1993, 94-1 CPD ¶ 3; The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174, aff'd, Moon Eng'g Co., Inc.--Recon., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233. On the other hand, where no reasonable possibility of prejudice is shown or is otherwise evident from the record, our Office will not sustain a protest, even if a deficiency in the procurement is apparent. MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306.

Here, Colonial's price for its proposal, which was rated "acceptable," was so much higher than the majority of the offerors' prices, including all of the awardees' prices, that we cannot consider this an instance where prejudice is evident from the record. Thus, in order to establish a

---

[2]Notwithstanding that award was made to the lowest-priced offerors, State has not stated that the "best value" evaluation scheme did not represent its requirements. Indeed, as indicated in our prior decision, we think that the unreasonable and undocumented source selection precludes a finding that the agency intended to change the evaluation scheme.

reasonable possibility of prejudice, Colonial, at a minimum, had to present credible evidence that in a proper evaluation its technical proposal reasonably could be found sufficiently superior to those of the lower-priced offerors to offset the difference in price such that it could have received one of the seven proposed awards.[3] See Lithos Restoration Ltd., supra; Met-Pro Corp., B-250706.2, Mar. 24, 1993, 93-1 CPD ¶ 263; Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29. Alternatively, if the agency had abandoned the "best value" approach and made award on the basis of low-priced, technically acceptable proposals because this reflected the agency's actual requirements, Colonial would have had to show the reasonable possibility that it would have offered a significantly lower price had it known of the revised evaluation scheme. See Tritek Corp., B-247675.2, Aug. 6, 1992, 92-2 CPD ¶ 82; Gould Inc.; Ocean Sys. Div., B-229965, May 16, 1988, 88-1 CPD ¶ 457; WHY R & D, Inc., B-221817, Apr. 16, 1986, 86-1 CPD ¶ 375.

In any case, where, as here, prejudice is not otherwise evident and the protester has sufficient information to show a reasonable possibility of prejudice and fails to do so, relying solely on general allegations of prejudice, our Office will deny the protest. Compare Labrador Airways Ltd., B-241608, Feb. 13, 1991, 91-1 CPD ¶ 167 (protest denied where the protester failed to go beyond a general allegation of prejudice, even though it had information at its disposal from which it could have shown a possibility of

---

[3]Colonial alleges that the requirement that the protester show prejudice resulting from the agency's failure to adhere to the evaluation criteria is contrary to our Office's precedent. In each of the decisions cited by Colonial, however, we found specific evidence in the record establishing a reasonable possibility of the protester's competitive success but for the procurement deficiencies. See, e.g., Northwest EnviroService, Inc., 71 Comp. Gen. 453 (1992), 92-2 CPD ¶ 38 (record established that specific aspects of protester's proposal were technically superior to the lower-priced proposals and the awardee's proposal appeared to be technically unacceptable); Frank E. Basil, Inc., 69 Comp. Gen. 472 (1990), 90-1 CPD ¶ 492 (agency unreasonably evaluated the protester's proposal and the record established the technical score that protester should have received was higher than the awardee's score and the price difference was extremely small); Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96 (the record included a computation of the estimated price of the protester's proposal absent the procurement deficiencies and that price established a reasonable possibility that the protester suffered competitive prejudice under one of two awards protested).

prejudice if there was any) with XRT Corp., B-246991, Apr. 22, 1992, 92-1 CPD ¶ 378 (protest sustained even though only a general allegation of prejudice was made, inasmuch as the protester did not have sufficient information at its disposal to establish more).

Counsel for Colonial had at its disposal (pursuant to a protective order issued in this case) voluminous information related to proposal evaluation and source selection, including the proposals of Colonial, Paxton, and all offerors proposed for award; State's acquisition plan; the complete evaluation documentation concerning all submitted proposals (both initial and revised) prepared by the technical evaluators, both individually and collectively; and all documentation related to the award decisions. Counsel for Colonial did not use this information to show the degree of technical quality of Colonial's proposal relative to other proposals.[4] Instead, Colonial relied on generalized statements that its proposal was initially rated "exceptional" by the technical evaluators, who then changed this rating to "acceptable" upon receipt of best and final offers without explanation. Colonial then posited that its proposal should have been considered technically superior to the lower-priced "acceptable" proposals and at least be rated equal to Interstate's low-priced "exceptional" proposal.

The basic premise on which Colonial makes its generalized assertions of prejudice was not supported by the record. State did not rate Colonial's proposal as "exceptional" at any time. Some individual evaluators wrote "exceptional," or its equivalent, on their work sheets for many individual evaluation factors regarding aspects of Colonial's initial proposal and then crossed the references out, writing or indicating "acceptable" in their place. The evaluators, acting together as the technical evaluation panel, gave Colonial's initial proposal an overall technical rating of "acceptable" and never changed this rating. Moreover, our review of the evaluators' notes regarding Colonial's proposal strengths does not support a conclusion that Colonial was entitled to an "exceptional" rating.

---

[4]As noted in our prior decision, Colonial did compare its proposal to that of two proposed awardees, Kloke Transfer Company and Interstate Van Lines, Inc. We found Kloke should have been rated "unacceptable" by the agency. With regard to Interstate, which received an "exceptional" rating, Colonial alleged that it should have been rated at least equal to that awardee. However, these limited comparisons by Colonial were not sufficient to show the reasonable possibility of prejudice.

Colonial recognized and protested that State's evaluations were unreasonable and did not attempt to differentiate among proposals on the basis of technical quality. As noted above, State expressly asserted that Colonial's price was so high that no possible technical superiority of that firm's proposal could offset it. Given Colonial's contentions that the evaluation did not differentiate among the offerors' proposals and State's assertion that Colonial was not prejudiced, we think that Colonial should have been reasonably cognizant of the need to show why its proposal reasonably could be found so technically superior to the lower-priced offerors that there was a reasonable possibility that it was prejudiced by the improper evaluation.

In a footnote in its reconsideration request, Colonial disagrees with the statement in our prior decision that it did not contend that it would or could have significantly lowered its very high price if the evaluation scheme had been changed to provide for awards to the low-priced, technically acceptable proposals and had Colonial been so informed. In support of this disagreement, Colonial references a footnote included in one of its protest filings, which stated:

> "If the [s]olicitation had stated that award would be made to the lowest priced offerors whose proposals were acceptable, then offerors would have prepared proposals to meet the minimum technical requirements of the [s]olicitation."

Colonial argues that this allegation was sufficient to show that it would have lowered its price by the more than $4 million necessary to be competitive had it been advised of a change in the evaluation plan. Here, too, Colonial failed to establish a reasonable possibility of prejudice since the price reduction it purportedly asserted was only vaguely and unconvincingly alluded to in its protest. See WHY R & D, Inc., supra (to establish prejudice, protester must give more than a bare statement that it would have lowered its price if it had knowledge of the unstated evaluation plan).

Colonial also alleges that our decision sustaining Paxton's protest and finding Paxton was prejudiced is inconsistent with our failure to find Colonial prejudiced. However, for the export services, prejudice to Paxton was evident from the record, given that State proposed to make seven awards; Paxton's price was eighth-lowest (much lower than Colonial's but relatively close to the awardees' prices); and the proposal of one proposed awardee (Kloke) with a lower price than Paxton should have been found unacceptable. Under these circumstances, even if Paxton's technical proposal

was only of equal quality to the other offerors,[5] Paxton should have received an award under the stated best value procurement plan and Paxton was thus prejudiced by State's actions.

Colonial alleges that our decision on Paxton's protest with regard to the inbound service awards was also inconsistent with our determination that Colonial was not prejudiced with regard to the export service awards, inasmuch as Paxton's overall price for the inbound services was at least as relatively high as was Colonial's price for the export services. We disagree. We did not recommend disturbing the awards for inbound household effects (HHE) services, even though Paxton correctly asserted that the agency had not adhered to the evaluation criteria in making the inbound service awards. As in Colonial's case, we reached this result because Paxton's price on the HHE services was so high that it could not reasonably have been said to have suffered competitive prejudice. In contrast, with regard to the inbound unaccompanied air baggage (UAB) service awards, we sustained Paxton's protest and recommended corrective action because Paxton's price was relatively close to the other, lower prices and the record showed a reasonable possibility that Paxton's technical proposal may have been superior to the other offerors.

We deny the request for reconsideration.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel

---

[5]In contrast to Colonial's evaluation, Paxton's initial technical proposal was actually rated "exceptional" by the evaluators and then lowered to "acceptable" upon receipt of BAFOs without explanation.