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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Kaman Sciences Corporation

File No.: B-258171

Date: October 4, 1994

DECISION

Kaman Sciences Corporation protests the award of a contract to Nichols Research Corporation under request for proposals (RFP) No. MDA-908-94-D-1516, issued by the Maryland Procurement Office, for assessment of "the physical characteristics and performance of military missile systems." Kaman argues that the award is improper because Nichols had a higher projected cost than did Kaman, and because Kaman met all of the technical requirements of the RFP.

We dismiss the protest because Kaman is not an interested party to challenge award to Nichols.

The solicitation contemplated award of a cost-plus, fixed-fee, indefinite delivery requirements contract to the offeror whose proposal offered the best overall value to the government. Offerors were advised that proposals would be rated under the following evaluation factors, and at the following weights: technical, 45 percent; cost, 25 percent; management, 20 percent; and past performance, 10 percent.

Three proposals were received by the November 24, 1993 initial closing date, and all three proposals were included in the competitive range. After completion of initial evaluations, discussions, receipt of best and final offers, and final evaluation, the ranking of offerors (on a 100-point scale) was as follows:

Nichols	77.9
Company A	71.6
Kaman	67.0

On August 5, 1994, the agency made award to Nichols, and on August 12 Kaman filed this protest.

In lieu of an agency report, the agency requests that the protest be dismissed on the basis that Kaman is not an interested party to challenge award to Nichols, and that

Kaman has stated no basis of protest regarding the agency's evaluation of its own proposal. We agree.

Under the Competition in Contracting Act of 1984 and our Regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a) (1994). That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a).

Here, there is an intervening offeror in line for award between the awardee, Nichols, and the protester. As a result, Kaman does not have a direct economic interest in the outcome of the procurement since even if its protest of the awardee's evaluation were sustained, Kaman would not be in line for award. Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463.

In response to the agency's request for dismissal, Kaman states that it agrees with the agency's contention that it would not be in line for award if its initial protest had only challenged the evaluation of the awardee. However, Kaman argues that it also raised a challenge to its own evaluation, thus raising the possibility that after reevaluation Kaman might be in line for award. In our view, however, Kaman's initial protest filing does not raise a legally sufficient challenge to its own evaluation.

Our Bid Protest Regulations require that a protest shall include a detailed statement of the legal and factual grounds for protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Alascom, Inc. -- Second Recon., B-250407.4, May 26, 1993, 93-1 CPD ¶ 411.

Kaman's protest, in essence, sets forth a series of positive statements about its proposal with no corresponding assertion about how the evaluation was improper. Kaman states that its proposal was clear, concise, demonstrated a detailed understanding of the work, proposed highly qualified key personnel, and contained a management structure that exceeded the solicitation's criteria. However, even if each of Kaman's assertions about its proposal is accepted at face value, they do not provide any basis for a conclusion that the agency's evaluation was in

error or improper. See Federal Computer Int'l Corp.-- Recon., B-257618.2, July 14, 1994, 94-2 CPD ¶ 24; Frank E. Basil, Inc./Holmes and Narver Serv., Inc., B-245899, Oct. 8, 1991, 91-2 CPD ¶ 319.

The statement below is an example of why we conclude that Kaman's protest letter fails to state any basis of protest regarding the evaluation of its own proposal. After complaining that Nichols is more expensive and providing evidence that, in 1987, Nichols was criticized by the agency for its lack of understanding of some of the concepts necessary for successful performance of this effort, Kaman argues that:

"[i]n contrast, Kaman's proposal presented a methodology that was clear and concise and in keeping with accepted practices within the intelligence community, clearly demonstrating a thorough knowledge and understanding of the statement of work and an in-depth understanding of relevant scientific analyses, methodologies and practices."

In our view, it is possible for each assertion set forth above to be true, and at the same time, for the selection of Nichols to be entirely appropriate and consistent with the stated evaluation criteria. What is lacking in Kaman's protest is a claim that some particular facet of the Kaman proposal was misunderstood, improperly downgraded, or evaluated in a manner inconsistent with the solicitation's criteria, or that in some other way its proposal was not selected in violation of statute or regulation. See Anchor Fabricators, Inc., B-246215, Oct. 24, 1991, 91-2 CPD ¶ 374. The protest fails to consider that the agency may have selected Nichols because it reasonably concluded that the Nichols proposal was better.

Kaman also argues that its challenge to its own evaluation is no less general than other challenges that have been considered by our Office. We disagree. Kaman points to our decision in Science Sys. and Applications, Inc., B-240311 et al., Nov. 9, 1990, 90-2 CPD ¶ 381, and argues that the protester there claimed only that its proposal may have been underrated. In fact, the protester in that case also argued that the agency did not give the pre-award notification required by Federal Acquisition Regulation (FAR) § 15.1001; did not state any general reason why the proposal was unsuccessful; and did not give the protester a requested

post-award debriefing.¹ Science Sys. and Applications, Inc., SUPRA.

In addition, unlike here, after the agency provided a debriefing, the protester in the Science Systems and Applications case supplemented its protest with additional details regarding its evaluation. Although Kaman received its debriefing after it filed its initial protest, the detailed nature of the debriefing materials shows that Kaman should have been in a position to amend its protest to provide detailed support for any contention that it was wrongly evaluated.

For example, during the debriefing Kaman was advised that it was downgraded because of the agency's concern regarding more than 11,000 hours of effort that had been proposed for performance by a subcontractor in Kaman's initial proposal, but had been moved in-house in Kaman's best and final offer (BAFO). In its response to the agency's request for dismissal, Kaman acknowledges that "[b]ecause of an inadvertence, the detail sheets furnished with the BAFO showed the hours removed from the subcontractor but not added to Kaman's hours." Kaman, however, did not amend its initial protest to challenge the agency's treatment of this issue. Instead Kaman argues that this issue was covered in its initial protest, or alternatively, should be considered timely raised in Kaman's response to the agency's dismissal request.

Kaman's initial protest cannot reasonably be read to include a challenge to the evaluation issues the agency perceived from the error in Kaman's BAFO. We also cannot conclude that Kaman's response to the agency's dismissal request constitutes a timely raising of whether the agency reasonably evaluated Kaman's BAFO despite Kaman's admitted error.²

¹Likewise, the other cases cited by the protester in opposition to the agency's dismissal request are inapplicable to the situation here. In Textron Marine Sys., B-243696, Aug. 19, 1991, 91-2 CPD ¶ 162, the protester set forth numerous specific challenges to the evaluation of its proposal, including an allegation that the agency failed to conduct meaningful discussions because it did not adequately alert Textron to the deficiencies in its proposal. In Sacha Sinha and Assocs., Inc., B-236911, Jan. 12, 1990, 90-1 CPD ¶ 50, the protester claimed that the agency wrongly concluded that its key personnel were unacceptable.

²Although Kaman received its debriefing on August 16, it first raised this issue here in its September 19 filing.
(continued...)

Since Kaman fails to state a basis of protest regarding its own evaluation, and lacks the necessary economic interest to challenge the evaluation of the awardee, we will not consider its protest.

The protest is dismissed.

Christine S. Melody
Christine S. Melody
Assistant General Counsel

²(...continued)

According to Kaman, since it complained about the evaluation of this portion of its BAFO during the debriefing, it did not know that the agency was rejecting its complaints until the agency submitted its request for dismissal. Despite Kaman's arguments to the contrary, it was not reasonable to assume that the agency was reconsidering the evaluation because Kaman complained at the debriefing. Since award had been made to Nichols, and the protest was ongoing, there is no evidence that the agency was actively reconsidering the evaluation results, and Kaman could not wait until its receipt of the agency's request for dismissal to complain about this portion of its evaluation.