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

Decision

Matter of: Premier Nurse Staffing, Inc.--Reconsideration

File: B-258288.3

Date: April 3, 1995

James K. Kearney, Esq., Reed Smith Shaw & McClay, for the protester.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency determined that the three highest-ranked technical proposals were technically equal and made award on the basis of the lowest priced of those three proposals, highest-priced offeror, which does not specifically challenge the evaluation of the intervening, lower-priced offeror, is not an interested party to challenge the award, since the protester would not be in line for award even if the protest were sustained.

DECISION

Premier Nurse Staffing, Inc. dba SRT MedStaff requests that we reconsider our dismissal of its protest of the award of a contract to Med Staff, Inc. under request for proposals (RFP) No. DADA15-93-R-0019, issued by the Department of the Army for nursing services at the Walter Reed Army Medical Center in Washington, D.C. We dismissed the protest because Premier is not an interested party to maintain the protest. See 4 C.F.R. § 21.0(a) (1995).

We affirm the dismissal.

BACKGROUND

The RFP contemplated the award of a fixed-price, requirements contract for a base period with up to four 1-year option periods. Offerors were required to submit separate technical and price proposals. Section M of the RFP listed the following technical evaluation factors in descending order of importance: (1) offeror's experience; (2) training and experience of nurses; (3) quality control plan; and (4) billing procedures and communications. The RFP stated that price would not be point scored and was to be evaluated separately for reasonableness, realism, and consistency with the technical proposal. Technical factors

were significantly more important than price. Award was to be made tc the offeror whose proposal was most advantageous to the government.

Thirteen offerors responded to the RFP by the time set on May 11, 1994, for receipt of initial proposals. Following the initial evaluation, the agency included 11 proposals within the competitive range, conducted written discussions, requested best and final offers (BAFO) from those 11 offerors, and reevaluated proposals. Based on the results of the final evaluation, the technical proposals submitted by three offerors, including the protester and the awardee, received perfect scores (100 points) and were considered technically essentially equal, as follows:

Offeror	Score	Total Price
Premier	100	$22,612,347
B	100	21,538,222
Med Staff	100	19,304,698

Since these three offerors' proposals were considered essentially technically equal, price became the determining factor for award. Based on its analysis, the agency determined that Med Staff's lower price was realistic and reasonable and awarded the contract to that firm on August 16. Premier subsequently filed a protest in our Office arguing that the agency had improperly failed to evaluate Med Staff's proposal in accordance with the criteria announced in the RFP.[1] The protester maintained that had the agency followed the RFP's evaluation scheme, the agency would have concluded that Premier's proposal was superior to Med Staff's, and therefore, was most advantageous to the government. On September 1, Premier supplemented its protest, generally arguing that "on information and belief" its proposal was technically superior to that of other offerors.

We reviewed the record in light of Premier's allegations and concluded that Premier was not an interested party to maintain the protest. See 4 C.F.R. § 21.0(a). Specifically, we found that since nothing in Premier's protest would alter the perfect rating assigned offeror B's lower-priced proposal, Premier--which submitted the highest-priced of the three top-ranked proposals--would not

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[1]On September 22, the head of the procuring activity determined that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for our decision, and authorized performance of the contract notwithstanding the protest. See 31 U.S.C. § 3553(d) (1988).

be in line for award even if its protest allegations concerning the evaluation of the awardee's proposal were sustained. See The Wollongong Group, B-224531, Dec. 18, 1986, 86-2 CPD ¶ 682. Accordingly, we dismissed the protest because Premier lacks the direct economic interest necessary to be an interested party for pursuing the protest. See Airtrans, Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473.

RECONSIDERATION REQUEST

Premier argues that since it alleged in its initial protest that the agency had improperly failed to follow the RFP's evaluation scheme and challenged the "overall" evaluation, its protest implicitly included a challenge to the evaluation of offeror B's proposal. Premier also argues that it is an interested party under our decision in Northwest EnviroService, Inc., 71 Comp. Gen. 450 (1992), 92-2 CPD ¶ 38.

Although in its initial protest, which was based on the firm's "information and belief," Premier generally challenged the overall evaluation, the firm did not present any evidence during the proceedings to show that the evaluation of offeror B's proposal was flawed. In its supplemental protest, Premier continued to argue "on information and belief" that its proposal was technically superior to that of other offerors. Premier failed to provide, however, any evidence, arguments, or specific information upon which the firm based that conclusion.

In response to Premier's protest, the agency submitted a complete report including offeror B's proposal; the individual evaluators' sheets for the three top-ranked proposals, including offeror B; and the contracting officer's statement explaining in detail the evaluation process and the agency's rationale for concluding that the three top-rated proposals were technically equal. Although Premier's "information and belief" protest relied primarily on the argument that the agency had improperly evaluated the three top-ranked proposals, Premier did not challenge any specific aspect of the evaluation of offeror B's proposal.

We recognize that particularly in matters involving negotiated procurements, a protester often does not have access to all of the information which forms the basis of a protest. That was not the case here. Our Office issued a protective order under 4 C.F.R. § 21.3, and counsel for Premier was admitted thereunder to obtain access to protected materials. Thus, upon receipt of the contracting agency's response to its protest, Premier had available to it the complete agency report, including offeror B's proposal, price, the evaluation documents, and other source selection documents explaining in detail the evaluation and

selection process. Based on the information contained in the agency report, it should have been clear to Premier that even if the agency had improperly concluded that Med Staff's proposal was technically equal to Premier's, offeror B--not Premier--would be in line for award.

Nevertheless, Premier's comments focused exclusively on alleged deficiencies in the evaluation of Med Staff's proposal. In advancing its position, Premier ignored the fact that offeror B's proposal also received a perfect rating; was considered to be essentially equal to Premier's proposal; and was lower in price than Premier's. Thus, even if we were to agree with the protester that Med Staff's proposal should have received less than the maximum score in the evaluation, offeror B would be next in line for award, not Premier.

Even in its reconsideration request, Premier fails to provide any argument or information to show that the agency's conclusion that offeror B's proposal was technically equal to Premier's was unreasonable. Given Premier's higher price, and since nothing in Premier's protest would alter the perfect rating assigned offeror B's lower-priced proposal, Premier would not be in line for award even if its protest allegations concerning the evaluation of the awardee's proposal were sustained. The protester has not provided any arguments on reconsideration that compel a different conclusion.

The protester's reliance on our decision in Northwest EnviroService, Inc., supra, to argue that it is an interested party is also without merit. In that case, Northwest, which had submitted the highest-priced proposal, protested the award on the basis that the agency had failed to properly evaluate the competing proposals. The agency argued that since Northwest's proposal was ranked third and was the highest priced, the firm was not an interested party to maintain the protest.

We disagreed with the agency's position. We noted that rather than ranking technical proposals, the agency had found that except for price, all three proposals were essentially equal. As relevant to Premier's position, Northwest specifically argued that had the agency conducted a proper evaluation, its proposal would have received a higher rating, while the other two proposals should have been downgraded. Northwest provided specific, detailed arguments showing how the evaluation of both of the competing proposals in the areas of past performance and technical approach was flawed. We thus concluded that if Northwest's arguments had merit and we sustained its protest, it was entirely possible that following a reevaluation of competing proposals, the agency could

determine that Northwest's proposal represented the "best value" to the government, despite its higher price. See SAMCO dba Advanced Health Sys., Inc., B-237981.3, Apr. 24, 1990, 90-1 CPD ¶ 413. Accordingly, we considered Northwest an interested party to maintain the protest.

Here, in contrast to Northwest's protest, Premier did not specifically challenge any aspect of the evaluation of offeror B's proposal, and that proposal was considered technically equal to the protester's and was lower in price than Premier's. Thus, unlike the option available to the agency in Northwest EnviroService, Inc., supra (of reevaluating proposals and selecting a higher-priced, higher-rated offeror), even if Med Staff's proposal were eliminated from the competition, since offeror B's and Premier's proposals received the maximum point score available and were considered technically equal, and since offeror B's proposal was lower in price, the agency could not reasonably conclude that Premier's proposal represents the "best value" to the government.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either 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). Premier's repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The dismissal is affirmed.

Michael R. Golden
Acting Associate General Counsel