

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-219342

DATE: September 24, 1985

MATTER OF: Automation Management Consultants Inc.

DIGEST:

1. Where protester learned the facts essential to the bases of three of its protest allegations but failed to file its protest within 10 days of becoming so aware, the allegations are untimely and not subject for consideration under GAO Bid Protest Regulations.
2. Protest alleging that contracting agency evaluator was not furnished complete copy of protester's proposal based solely on evaluator's written statements is denied where the agency denies the allegation and where those statements can also be read as indicating complete proposal was evaluated but that proposal contained deficiencies.
3. Allegation that a task to be performed under contract had already been performed "in-house" and should not have been a factor in the evaluation of proposals is denied where not supported by facts and where the failure to evaluate task would constitute an unauthorized deviation from the evaluation scheme.

Automation Management Consultants, Inc. (AMCI) protests the award of a contract under request for proposals (RFP) No. N00600-84-R-4184 to Resource Consultants, Inc. (RCI) by the Department of the Navy. The RFP solicited proposals for the provision of support services for the Navy's review and analysis of military compensation issues. AMCI alleges improprieties in the Navy's evaluation of its proposal. As discussed below, because AMCI failed to raise several of the allegations contained in its protest in a timely fashion, we are dismissing them. The remaining allegations are denied.

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The RFP solicited proposals for the performance of two major tasks: the preparation of a study of military compensation issues to be completed in the first year of the contract, and the preparation of responses to technical questions about the study during the first year and two option years. After receiving initial proposals, the Navy wrote to the offerors, discussing deficiencies in their proposals and requesting their best and final offers (BAFOs). No further discussions were held with any offeror after submission of the BAFOs. The Navy's evaluation of AMCI's and RCI's technical proposals showed them to be almost equal. Although AMCI submitted a lower-priced proposal (\$300,361) than RCI (\$338,398), the Navy increased the price of AMCI's proposal as a result of a cost realism evaluation. As AMCI's adjusted price (\$343,060) was higher than RCI's proposed price, the Navy awarded the contract to RCI.

AMCI protests the award to RCI on the following grounds:

- (1) that the Navy's evaluation of AMCI's proposal was arbitrary and capricious,
- (2) that the Navy improperly adjusted AMCI's price upward,
- (3) that the Navy's evaluation of AMCI's BAFO was incomplete,
- (4) that the Navy failed to conduct meaningful discussions with AMCI,
- (5) that one of the Navy evaluators did not receive AMCI's complete proposal, and
- (6) that the first task should not have been evaluated since it had already been performed "in-house" by the Navy.

Initially, the Navy challenges the timeliness of AMCI's protest. The Navy contends that during the course of a telephone conversation between the contract negotiator and AMCI's president on May 8, 1985, AMCI became aware of the bases of its first four protest allegations but failed to file its protest within 10 days. AMCI acknowledges a telephone conversation took place, but responds that it only learned of the specific facts relating to the Navy's evaluation of its proposal at a formal debriefing on May 23, 1985, after which AMCI timely filed its protest on May 29, 1985. Our Bid Protest Regulations require that a protest be filed

"not later than 10 days after the basis of protest is known or should have been known, whichever is earlier." 4 C.F.R. § 21.2(a)(2) (1985). As discussed below, we find that as a result of the telephone conversation of May 8, 1985, AMCI learned the facts essential to the bases of three of its protest allegations.

The Navy has furnished a sworn affidavit of the contract negotiator, which contains the negotiator's account of what he told AMCI during the telephone conversation on May 8, 1985. Specifically, the negotiator states that he told AMCI that the Navy conducted a cost realism study of AMCI's BAFO, and that both the labor hours and the cost of labor were deemed to be unrealistically low for the first task. He explained that AMCI inexplicably reduced the number of man-hours proposed to perform the first task contained in AMCI's initial proposal from 1,000 hours to 500 hours in AMCI's BAFO. The negotiator states he told AMCI that, based on the Navy's estimate of the hours of labor required for the first task and AMCI's payroll records, the Navy increased AMCI's price from approximately \$300,000 to \$343,000. The contract negotiator also states that he told AMCI that the award to RCI was based on RCI's lower price, as the contracting officer had determined the two technical proposals to be essentially equal. Our review of AMCI's own account of the telephone conversation, contained in its original protest letter, confirms the contract negotiator's sworn account. In addition, according to AMCI, the negotiator also explained the nature of the deficiencies in RCI's initial proposal. In responding to the agency's report raising the timeliness issue, AMCI does not deny that it learned the above-mentioned facts, but instead simply maintains that it did not learn the specific reasons for the Navy's award to RCI until the debriefing on May 23, 1985.

Based on the above, we conclude that as a result of the telephone conversation, AMCI had knowledge of the reason for the method and the amount of the Navy's upward adjustment of AMCI's price proposal. These are the essential facts upon which AMCI bases its first two allegations, that the Navy evaluation was arbitrary and that the price adjustment was improper. In addition, we conclude AMCI had knowledge of the content of the discussions held with RCI and of the fact that the Navy did not conduct any further discussions with any of the offerors after receipt of the BAFOs. These are the essential facts upon which AMCI bases its fourth allegation, regarding the Navy's failure to conduct meaningful discussions. Consequently, we think it clear from the record that AMCI had knowledge of the essential factual bases of three of its protest allegations as of

May 8, 1985. AMCI's failure to file its protest concerning these allegations within 10 days of learning their factual bases renders them untimely for consideration under our Bid Protest Regulations. See Dorset Manufacturing & Electronics, Inc., B-215377, Sept. 6, 1984, 84-2 CPD ¶ 260. Although AMCI cites three decisions in support of its contention that we should measure the timeliness requirement from the time of the debriefing on May 23, 1985, we find them distinguishable since, unlike here, the protester learned of the award but had no knowledge of the specific basis of its protest until after the debriefing. See University of the District of Columbia, B-213737, Sept. 24, 1984, 84-2 CPD ¶ 330; American Management Systems, Inc., B-215283, Aug. 20, 1984, 84-2 CPD ¶ 199; Trelleclean, U.S.A., Inc., B-213277.2, June 25, 1984, 84-1 CPD ¶ 661.

Moreover, the fact that AMCI learned additional information at the debriefing which formed the bases for its remaining protest allegations does not affect the timeliness of the three aforementioned allegations. Where, as here, a protest incorporates multiple bases, we have held that each individual basis of protest must independently satisfy the timeliness standards. Tracor Jitco Inc., B-208476, Jan. 31, 1983, 83-1 CPD ¶ 98 at 4.

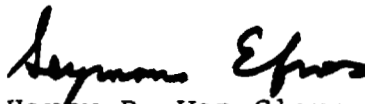
We therefore dismiss as untimely AMCI's first, second and fourth allegations.

As to the remaining allegations, our review of AMCI's protest reveals that its third and fifth allegation are essentially the same. AMCI asserts that the written evaluation made by one of the Navy evaluators "indicates" that he was not furnished AMCI's BAFO cover letter which AMCI contends addressed the Navy's concerns raised in discussions, and that the resulting evaluation of AMCI's BAFO was therefore incomplete. AMCI's assertion is based on the evaluator's two statements: (1) that there was "no answer by [AMCI] to Dr. Warner's availability in final proposal," and (2) that the Navy's "statement about poorly organized and presented reports [was] not addressed as indicated by final proposal package."

The Navy reports that "all the evaluators were given complete technical packages." In view of this conflict, AMCI's third and fifth protest allegations are denied as AMCI has not affirmatively met its burden to prove its case. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396 at 8. In any event, inspection of the cover letter reveals that, even if the evaluator had considered it, he might have made the same remarks. The cover letter

provides for the contingency that Dr. Warner might not be available, thereby perpetuating rather than eliminating the question of the availability of a key member of AMCI's personnel. The cover letter also does not provide detailed information regarding AMCI's ability to organize and present reports, but rather merely references an attachment, which may have caused the evaluator to make the second statement.

In support of AMCI's sixth and final protest allegation, AMCI cites an "Economic Analysis Report," prepared by a naval officer, which AMCI claims is "identical" to the report required under first task of the RFP. AMCI argues that the task, having been performed, should not have been evaluated. The Navy replies that the cited report is not the report to be prepared under the first task of the contract, but is merely an outline to be used in analyzing the report expected to be prepared. The fact that RCI is currently performing the first task is sufficient to indicate that the Navy still needs the report and that the Navy's evaluation of the proposals as to the preparation of the report was warranted. Once the offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in evaluating the proposals. Columbia Research Corp., B-202762, Jan. 5, 1982, 82-1 CPD ¶ 8. Thus, if the Navy had evaluated the proposals without considering the first task as urged by AMCI, the evaluation would have constituted an unauthorized deviation from the evaluation scheme set forth in the RFP. We therefore deny AMCI's allegation that the first task under the RFP should not have been evaluated.

for 
Harry R. Van Cleve
General Counsel