



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Continental Telephone Company of
California
File: B-222458.2
Date: August 7, 1986

DIGEST

1. Protest to the General Accounting Office subsequent to agency-level protest filed 6 weeks after agency notified protester of rejection of proposal is untimely since protester did not diligently pursue information that formed basis for protest.
2. Untimely protest of exclusion from competitive range will not be considered under the significant issue exception to GAO timeliness requirements where the protest does not involve an issue of widespread interest to the federal procurement system within the meaning of Bid Protest Regulations since the question has been previously considered by our Office.
3. Protest alleging that awardee's proposal did not comply with solicitation requirements is dismissed since protester would not be in line for award if protest were upheld and, therefore, is not an interested party under GAO Bid Protest Regulations.
4. Claim for attorney's fee and proposal preparation costs is not for consideration where protest is dismissed as untimely.

DECISION

Continental Telephone Company of California (ConTel) protests the rejection of its proposal as technically unacceptable and the proposal's exclusion from the competitive range under request for proposals (RFP) No. N60530-85-R-0381 issued by the Department of the Navy, Naval Weapons Center, China Lake, California, for the design, fabrication, testing and installation of a fiber optic trunk system. ConTel also protests the award of the resulting contract to American Telephone and Telegraph Technologies, Inc. (AT&T), contending that the awardee's proposal did not comply with the solicitation requirement for a tight buffer design for single-mode fibers. We dismiss the protest and the claim for proposal preparation and other costs.

The RFP was issued on September 13, 1985, and by RFP amendment 0002, November 14, 1985, was established as the closing date for receipt of proposals. By letter dated March 20, 1985, the Navy informed ConTel that

its proposal was determined to be unacceptable and outside the competitive range, based on its evaluation against technical and other salient factors described in the RFP's Evaluation Factors for Award section.

The record indicates that ConTel first inquired of the Navy concerning the specific reasons for the rejection of its proposal in a letter dated April 16, 1986, and received by the agency on April 21. Stating that ". . . under Federal Government Procurement rules, a provider of a proposal can appeal a decision of the contracting officer within 60 days of the notice of elimination," ConTel referred to that letter as "an appeal for clarification of 'technical unacceptability.'"

By letter dated April 24, 1986 (which the protester states it received on April 29), the Navy provided a general listing of the areas in which the proposal was found to be deficient. When, on May 1, the protester received notice of the award of the contract to AT&T, it forwarded to the agency, by telegram, a protest of the award. On May 13, apparently before any action on the protest was taken by the Navy, ConTel protested the matter to our Office.

Our Bid Protest Regulations require that bid protests be filed within 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) (1986). The Navy argues that the protest is untimely because, by its own admission, ConTel was on notice as of March 20, 1986, of the rejection of its proposal as technically unacceptable, but it did not inquire of the Navy concerning the specific reasons for its rejection until the April 16 letter and did not protest the matter until after it received notice of award on May 1.

ConTel argues that its protest was timely because it was filed within 10 days after April 29, when it received the Navy's response to ConTel's April 16 "appeal for clarification of technical unacceptability." ConTel maintains that prior to its receipt of the Navy's response it did know the specific basis for protest--that is, "that the [a]gency had not properly reviewed its proposal." The protester further states that because "The CICA [Competition in Contracting Act of 1984] requires specificity in the protest and the assertion of all reasons at the time of protest," it could not have protested to the General Accounting Office earlier.

A protester has an affirmative obligation to pursue diligently the information that forms the basis of its protest, and if it does not do so within a reasonable time, our Office will dismiss the ultimately filed protest as untimely. Fugro Inter, Inc., B-219323, Oct. 2, 1985, 85-2 C.P.D. ¶ 373 at 2. Where, as here, a protest is filed initially with the contracting agency, our Office will consider a subsequent protest, provided that the initial protest to the agency is filed in accordance with the time limits prescribed in our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(3) (1986). If a protest filed with the procuring

agency is untimely under our Regulations, we will not consider the protest. Trinity Services, Inc., B-219634, Oct. 10, 1985, 85-2 C.P.D. ¶ 399.

In this case, the record indicates that between March 20 (when it received notice of the rejection of its proposal), and April 16--a period of almost 4 weeks--ConTel made no attempt to obtain from the Navy information concerning the specific reasons for the rejection of its proposal. Although the protester attempts to defend the delay in filing its protest in our Office on the basis of our Regulations that legally sufficient grounds of protest be clearly stated at the time of filing in our Office (4 C.F.R. § 21.1(c)(4) and 4 C.F.R. § 21.1(e)), ConTel, in fact, failed in its duty to pursue diligently the basis of its protest through its delay of almost 4 weeks before even inquiring concerning the reasons for its rejection. Daniels and Parks General Contractors, Inc., B-218342, May 10, 1985, 85-1 C.P.D. ¶ 529. Thus, ConTel's May 1, 1986, protest to the Navy, filed 30 working days after notice of its rejection, was untimely and, consequently, its subsequent protest to our Office was also untimely. Trinity Services, Inc., B-219634, supra, 85-2 C.P.D. ¶ 399 at 4.

ConTel further contends that if its protest was untimely filed, our Office should consider the merits of its protest under the provisions of 4 C.F.R. § 21.2(c), which states that an untimely protest may be considered where it raises issues significant to the procurement system.

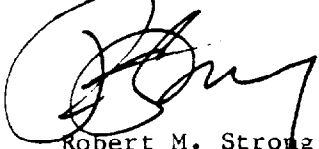
The significant issue exception to our timeliness rules will be invoked only where the subject matter of the protest is of widespread interest or importance to the procurement community and involves a matter which has not been considered on the merits in a previous decision of this Office. Taurio Corp., B-219008.2, July 23, 1985, 85-2 C.P.D. ¶ 74. The subject matter of this protest--the exclusion of a proposal from the competitive range in the evaluation of competing proposals--is a matter which we have previously considered (see Metric Systems, Corp., B-218275, June 13, 1985, 85-1 C.P.D. ¶ 682), and since it involves only the evaluation of a particular proposal, we do not consider the matter to involve an issue of significance to the Federal procurement system. Professional Review of Florida, Inc.; Florida Peer Review Organization, Inc., B-215303.3, B-215303.4, Apr. 5, 1985, 85-1 C.P.D. ¶ 394 at 6-7.

Concerning ConTel's protest of the award to AT&T, we note that out of the seven offers received in response to the solicitation, ConTel's proposal was ranked fifth high for technical acceptability, and that two higher ranked firms were found in the competitive range and, after discussions, acceptable for award. Under our Bid Protest Regulations, a party must be "interested" before we will consider its protest. 4 C.F.R. § 21.0(a) and 21.1(a) (1986). A party is not interested if it would not be in line for award should its protest be upheld. See Gracon Corp., B-219663, Oct. 22, 1985, 85-2 C.P.D. ¶ 437. In this case, even if the award to AT&T were found to have been improper as ConTel contends, ConTel would not be next

in line for award in view of the results of its technical evaluation.^{1/}
See C.A. Parshall, Inc., B-220650, B-220555.2, Jan. 14, 1986, 86-1
C.P.D. ¶ 38 at 4. Therefore, ConTel is not an interested party with
respect to the award to AT&T, and its allegations pertaining thereto will
not considered on the merits.

Since we have not decided ConTel's protest on the merits, we will not
consider its claims for attorney's fees and proposal preparation costs.
Fugro Inter, Inc., B-219323, supra, 85-2 C.P.D. ¶ 373 at 374.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel

^{1/} Although ConTel protests the agency's technical evaluation of its
proposal, that evaluation is not now subject to ConTel's challenge
because, as we stated previously, the protest on that basis is untimely.