The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E.H. Pechan & Associates, Inc.--
Reconsideration

File: B-225648.3

Date: April 15, 1987

DIGEST

1. Dismissal of original protest is affirmed where protester failed to file protest within 10 working days of the date the basis for protest was known, and the protester has not shown that the dismissal was based on errors of law or information not previously considered.

2. Protest allegations raised against award to firm are dismissed since protester is not interested party to raise issues where it would not be in line for award if these protest allegations were resolved in protester's favor.

DECISION

E.H. Pechan & Associates, Inc. requests reconsideration of our February 17, 1987, dismissal of its protest against the award of a contract to Decision Analysis Corporation (DAC) under request for proposals (RFP) No. DE-RP01-86EI19801, issued by the Department of Energy (DOE). We affirm the dismissal.

In its initial protest of January 13, as supplemented on January 27, Pechan alleged various procurement irregularities, including the improper evaluation of its proposal, which led to its elimination from the competition and the resultant improper award to DAC. By decision of February 17, however, we dismissed the protest finding that Pechan's protest was untimely since it was filed months after an oral debriefing was held on August 27, 1986. We noted that our Bid Protest Regulations require the protester to file its protest within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1986).

In its request for reconsideration, Pechan contends that its initial protest was timely filed because the firm was "unable to determine the reasons for its elimination" from the debriefing; thus, from a practical standpoint, it did not have "adequate information" to support a protest until it received notice of award to DAC on January 13, 1987. Pechan also argues that had it protested within 10 days after the debriefing, its protest may have been dismissed for lack of specificity. Pechan challenges our dismissal on other grounds, arguing that (1) it first became aware on January 13 that DOE had "respecified" the RFP by changing the contract base term from 1 to 2 years; (2) that its protest against DOE's determination that DAC is a responsible firm should not have been dismissed prior to the development of a complete record because this allegedly would have allowed Pechan to show that the responsibility determination was made in bad faith and contrary to definitive responsibility criteria set forth in the RFP; (3) that we did not consider its allegation that at the time DAC submitted its offer the firm's corporate charter had expired; and (4) that we did not address the alleged misrepresentation by DAC regarding one of its proposed key personnel.

Contrary to Pechan's argument that "it did not have adequate information to properly allege its complaint" until it received the notice of award, Pechan's January 27 submission, as we stated in our prior decision, clearly evidenced knowledge--obtained at the debriefing--of its grounds for protest. The record illustrates, for example, that as to Pechan's allegation that its proposal was improperly evaluated, the firm knew why its proposal had been rejected. In its January 27 submission, Pechan stated that:

> "At the debriefing, we were told of several claimed technical weaknesses in our proposal that had never been identified in the best and final questions. In fact, approximately 30 percent of the time spent at the debriefing by the Chairman of the TEC [technical evaluation committee] was in discussing these new issues. . . ."

The protester also stated in its January 27 letter that:

> "Other weaknesses [were] identified during the debriefing concerned points that were not even mentioned in the RFP as being relevant to the procurement at hand. For example, we were criticized for our lack of recent managerial experience relative to certain professional staff we proposed, though the RFP contained no requirement that the requisite experience be recent." (Emphasis in the original.)

We are therefore not persuaded that, at the conclusion of the debriefing, Pechan had "inadequate information" upon which to base its protest that DOE's technical evaluation of its proposal was allegedly improper, particularly since Pechan has not alleged that it obtained additional information between the debriefing and its protest.

Pechan also argues that January 13 was the first time it learned that DOE had "respecified" the RFP by changing the base contract period from 1 to 2 years; therefore, its January 27 protest of this issue was timely. We note, however, that the protester's present position seems to be contradicted by the January 27 submission wherein Pechan proffered the additional information contained therein as newly discovered information received on January 21. Nevertheless, we will not consider this protest ground because it does not provide a basis for us to object to the agency's rejection of Pechan's proposal or the award to DAC. Pechan states that after the firm's proposal was eliminated from competition by letter dated August 12, 1986, DOE conducted another round of best and final offers during which the agency allegedly changed the base period of performance. Assuming this to be true, Pechan has not demonstrated how it was prejudiced by such a change since, according to Pechan's version of the debriefing, the firm was eliminated because of several technical weaknesses in its proposal. We have held that an agency need not inform an offeror no longer in the competitive range of a solicitation amendment where the subject matter of the amendment is not directly related to the reasons the agency had for excluding the offeror from the competitive range. See The Maxima Corp., B-222313.6, Jan. 2, 1987, 87-1 C.P.D. ¶ ____.

Pechan argues that we improperly dismissed its protest against DOE's affirmative determination that DAC is a responsible offeror and its allegation of a "possible" misrepresentation by DAC as to one of its proposed key employees. Pechan further contends that we should have considered the issue of DAC's corporate status which was raised in its January 27 submission. In that submission the protester alleged that at all times relevant to this procurement, DAC's corporate charter had expired; thus, DOE's award was made to an apparent legal "non-entity." We need not reach the merits of these issues, however, since it is clear that Pechan is not an interested party under our regulations. Pechan was determined outside of the competitive range and Pechan's challenge to this determination was untimely raised. Thus even if these issues were resolved in Pechan's favor, the firm is not in line for award of this contract. See 4 C.F.R. § 21.0(a); Discount Machinery & Equipment, Inc., B-223462, Sept. 11, 1986, 86-2 C.P.D. ¶ 286 at 3.

Since Pechan has not shown that the prior decision was based on an error of law or information not previously considered, the prior decision is hereby affirmed. See IFR Systems, Inc.--Request for Reconsideration, B-222533.2, Nov. 24, 1986, 86-2 C.P.D. ¶ 601.

Harry R. Van Cleve
General Counsel