



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The International Association of
Fire Fighters
File: B-224324.2
Date: June 22, 1987

DIGEST

Where, as a result of the filing of a protest with the General Accounting Office, award of contract was delayed until the fiscal year following that in which the procurement was competed, there is no requirement that the procurement be recompeted since agency properly obtained funding for the contract under the current fiscal year's appropriations act and an extension of the proposed awardee's acceptance date.

DECISION

The International Association of Fire Fighters (IAFF) protests the award of a contract under request for proposals (RFP) No. EMW-86-R-2280 issued by the Federal Emergency Management Agency (FEMA) for the preparation of a publication, "Manual: Use of Drugs by Fire Department Members." The protest is denied.

This procurement was the subject of a previous protest filed by IAFF with our Office on September 12, 1986, in which the protester challenged FEMA's rejection of its proposal as technically unacceptable. By our decision, The International Association of Fire Fighters, B-224324, Jan. 16, 1987, 87-1 C.P.D. ¶ 64, we denied the protest because the record did not support a finding that the exclusion of IAFF's proposal from the competitive range was without a reasonable basis or that the protester's proposal had received "minimal" consideration. We also dismissed as untimely the protester's allegation that certain language in the RFP impliedly excluded the IAFF from the competition.

Following the issuance of our January 16 decision, FEMA obtained approval for use of fiscal year (F/Y) 1987 appropriated funds to cover the cost of the procurement and, on March 18, 1987, awarded the contract to the firm which it

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had selected. IAFF then filed the instant protest with our Office, contending that FEMA "violated the general principle that an agency is not authorized to compete a contract in one year and appropriate funds to that contract in a subsequent year." IAFF further contends that to award the contract in 1987, FEMA must recompetete the requirement in F/Y 1987 since F/Y 1986 funding for the contract lapsed while IAFF's previous protest of the procurement was being considered by our Office.

Although this is IAFF's second protest of the subject procurement we do not consider it a request for reconsideration since it does not pertain to our prior decision and is not related to the issues raised in the previous protest.

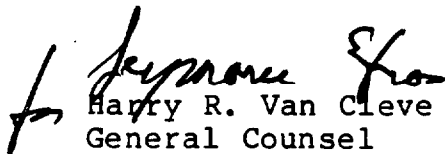
As a preliminary matter, FEMA takes the position that under our Bid Protest Regulations, IAFF is not an interested party to protest the award because it was not next in line for award and, moreover, its proposal was excluded from the competitive range because it was determined to be technically unacceptable. To be considered by our Office, a protest must be filed by an interested party as that term is defined in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(2) (Supp. III 1985), and our Bid Protest Regulations implementing that act, 4 C.F.R. § 21.0(a) (1986). An interested party is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

In determining whether a party is sufficiently interested to have its protest considered, we examine the extent to which a direct relationship exists between the question raised and the party's asserted interest and the degree to which that interest is established. Tumpane Services Corp., B-220465, June 28, 1986, 86-1 C.P.D. ¶ 95 at 2. Since in this instance IAFF is not protesting the agency's action with respect to the proposal it initially submitted in response to the solicitation, its status as an interested party to seek award under the solicitation is not determinative of the sufficiency of its interest concerning the issue raised here. If, as a consequence of IAFF's protest of the award of a contract whose original funding lapsed before award was made, the contracting agency should terminate the contract and recompetete the solicitation, then the protester would gain another opportunity to compete for the contract. Thus, IAFF's interest as a potential competitor if the protest is successful is sufficient for it to be considered an interested party. Tumpane Services Corp., B-220465, supra; see also Rolen-Rolen-Roberts International, et al., B-218424, Aug. 1, 1985, 85-2 C.P.D. ¶ 113 at 3.

Award of the contract was delayed as a result of the filing of IAFF's protest of the rejection of its proposal. In compliance with the provisions of 31 U.S.C. § 3553(c)(1) and 4 C.F.R. § 21.4(a), FEMA withheld award of the contract pending resolution of the protest. The delayed award of a contract for administrative reasons (such as the pendency of a protest or the unavailability of funds) is a procedural matter which does not invalidate the procurement or provide a basis for protest. Cedar Valley Corp., B-225475; B-225723, Feb. 24, 1987, 87-1 C.P.D. ¶ 211; Boyd-Ferm, Inc., B-218081, Feb. 21, 1985, 85-1 C.P.D. ¶ 222. In such instances, the contracting agency may request an extension of the proposal acceptance period to avoid the need for readvertisement. Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(d) (1986); Boyd-Ferm, Inc., B-218081, supra.

In this case, after the appropriations act under which the contract was to have been funded expired during the pendency of the protest, FEMA properly obtained funding for the contract under the current appropriations act (see Department of Treasury, Customs Service, 59 Comp. Gen. 431 (1980), 80-1 C.P.D. ¶ 313) and an extension of the proposed awardee's acceptance period. Under the circumstances of this case, award of the contract during a fiscal year subsequent to that in which the procurement was competed is not legally objectionable.

The protest is denied.


Harry R. Van Cleave
General Counsel