



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Raymond International Builders, Inc., Bauer of  
America Corporations and SIF-Bachy, a Joint  
File: Venture--Reconsideration  
B-225827.3  
Date: September 14, 1987

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### DIGEST

Prior decision dismissing protest as untimely is affirmed where request does not establish any factual or legal errors in the prior decision.

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### DECISION

The joint venture of Raymond International Builders, Inc., Bauer of America Corporations and SIF-Bachy (Raymond/Bauer) requests reconsideration of our decision, Raymond International Builders, Inc., Bauer of America Corporations and SIF-Bachy, a Joint Venture, B-225827.2, Aug. 11, 1987, 87-2 C.P.D. ¶       , in which we dismissed as untimely its protest under solicitation No. 7-SP-40-04900/DC-7710, issued by the Department of the Interior.

We affirm the dismissal.

In our August 11 decision, we noted that certain information related to the production schedule maintained by the contractor that performed the first phase of this two-phase construction project had not been supplied to potential offerors in the protested solicitation for the phase 2 work. Accordingly, we held that under our Bid Protest Regulations, Raymond/Bauer should have protested the solicitation's failure to provide that information to other offerors--which we viewed as the crux of the protest--before the closing date for receipt of proposals.

Raymond/Bauer contends that its real basis for protest was that the agency evaluated proposals on the basis of an evaluation criterion which was not disclosed by the RFP, i.e., the proposed construction schedule relative to the missing information. Raymond/Bauer argues that its protest was timely because it could not have known that there would be a critical relationship between the phase 1 construction schedule information that was not included in the

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solicitation and the evaluation of proposals. Raymond/Bauer concludes that our Office misunderstood its original basis for protest to be that the phase 1 production schedule information should have been provided to all offerors--not just known to the incumbent--in the RFP.

The protester also argues that we erred in the prior protest because we stated that Raymond/Bauer's pre-issuance Freedom of Information Act (FOIA) request for the information in question showed that Raymond/Bauer recognized the importance of the phase 1 production schedule prior to the closing date. Finally, the protester points out that the information it received from the contracting officer pertaining to Raymond/Bauer's evaluation in production schedule-related areas is different from the point totals we used in the statement of facts in our prior decision.

We do not agree with Raymond/Bauer's position. We fully understood that the original protest was presented as an objection to the evaluation of proposals in the production schedule area when, in fact, information pertaining to phase 1 production schedules had not been provided to offerors. Notwithstanding this characterization, however, the record showed that Raymond/Bauer had communicated with the agency on numerous occasions before and during the procurement process in its attempt to get the phase 1 production schedule information under the FOIA. Raymond/Bauer's FOIA request asked for information about construction excavation rates, progress, equipment used, and unexpected or difficult site conditions. All of these items bear on the phase 1 production schedule. Obviously, Raymond/Bauer realized the importance of that information to its own proposal well before award of this contract to another firm. Moreover, the protester does not dispute that the solicitation allowed evaluation of proposals for construction schedule, and even admits that during discussions the agency's negotiators told Raymond/Bauer they were concerned that Raymond/Bauer's proposed schedule was "too optimistic." Certainly, then, it was clear to Raymond/Bauer prior to the award--and well before the protest was filed--that its proposal was to be evaluated in the schedule area and that, for Raymond/Bauer's purposes the phase 1 production information lacking from the solicitation was critical.

Concerning the charge that the evaluation category point totals provided our Office differ from Raymond/Bauer's understanding based upon its debriefing, we can only state that the agency provided the evaluation totals to us in a

documented report on the protest and we discern no reason to doubt the accuracy of the agency's report.

Accordingly, the dismissal is affirmed.

*for* *Seymour E. Van Cleve*  
Harry R. Van Cleve  
General Counsel