

Mr. Evans



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bildon, Inc.

File: B-241375

Date: October 25, 1990

Donnell R. Fullerton, Esq., for the protester.
Dru J. Blaszczyk, Esq., for Trataros/Basil Joint Venture, an interested party.
Catherine M. Evans, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of conduct of protester's former employee, who left protester's firm and accepted employment with awardee firm during the competitive process, is essentially a dispute between private parties which is outside the scope of General Accounting Office's bid protest function.

DECISION

Bildon, Inc. protests the award of a contract to Trataros/Basil under request for proposals (RFP) No. F07603-90-R-8202, issued by the Department of the Air Force for construction work at Dover Air Force Base, Delaware. Bildon offers a number of protest grounds, but primarily complains that Trataros/Basil was awarded the contract after the Bildon employee responsible for preparation of its proposal left the firm and accepted employment with Trataros/Basil.

We dismiss the protest.

An allegation concerning the actions of a former employee and a competitor offeror during the competitive process involves a dispute between private parties concerning business practices and relationships which is properly for resolution by the involved private parties through the courts, if necessary. Sublette Elec., Inc., B-232586, Nov. 30, 1988, 88-2 CPD ¶ 540. Thus, this issue is outside the scope of our bid protest function. Id.

To the extent that Trataros/Basil's eligibility for award is affected by the alleged improper conduct of its employee, it

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involves the firm's responsibility. Federal Acquisition Regulation (FAR) § 9.104-1. The decision as to whether a firm is responsible is largely within the discretion of the contracting officer, and our Office will not review an affirmative determination of responsibility except in limited circumstances not applicable here. 4 C.F.R. § 21.3(m) (5) (1990); Fortune Serv. Co., B-238458, Feb. 15, 1990, 90-1 CPD ¶ 281. Similarly, we will not review another allegation by Bildon that Trataros/Basil submitted a below-cost offer, as this also concerns the contracting officer's determination that Trataros/Basil is responsible. Cajar Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286.

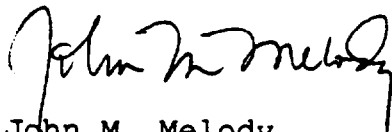
Bildon also maintains that its former employee's conduct amounts to collusion. However, we generally do not consider allegations of collusion under our bid protest function as this is for the Justice Department to consider. The Forestry Ass'n, Inc., B-237225, Oct. 19, 1989, 89-2 CPD ¶ 365. Moreover, the essence of collusive bidding is the absence of price competition, see generally FAR § 52.203-2; Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83; Bildon's allegation of collusion is thus inconsistent with its position that Trataros/Basil submitted a below-cost offer.

Bildon further contends that the agency did not permit it to submit a complete revision of its technical proposal. However, Bildon concedes that it was permitted to respond to the agency's extensive requests for clarification; it is therefore unclear how Bildon was prejudiced by being denied the opportunity to rewrite its proposal.

Bildon finally alleges that the agency conducted discussions with Trataros/Basil after the submission of best and final offers (BAFO) but did not conduct post-BAFO discussions with Bildon. Bildon bases this assertion upon a statement made by its former employee, now Trataros/Basil's employee, to Bildon employees that Trataros/Basil had been selected for award. Bildon argues that Trataros/Basil would not have known of the award in advance unless post-BAFO discussions had occurred. This argument is without merit. The agency informs us that the only information it requested from Trataros/Basil after BAFOs was a subcontracting plan for small and small disadvantaged business. This is consistent with FAR § 19.702(a), which requires the "apparently successful offeror" to submit an acceptable subcontracting plan. Satisfaction of that requirement is not related to the proposal's acceptability,

and therefore is not encompassed by discussions. See Ask
Mr. Foster Travel Div., B-238305, May 9, 1990, 90-1 CPD ¶ 460.
Therefore, Bildon's protest in this regard lacks a valid
basis.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "John M. Melody".

John M. Melody
Assistant General Counsel