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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aerostructures, Inc.--Reconsideration

File: B-242315.2

Date: July 31, 1991

Dennis J. Riley, Esq., and Kenneth A. Martin, Esq., Elliott, Bray & Riley, for the protester.
Robert G. Janes, Esq., and Carolyn E. Riemer, Esq., Department of the Navy, for the agency.
Steven W. DeGeorge, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester does not present information not previously considered which warrants reversal or modification of prior decision denying protest.

DECISION

Aerostructures, Inc. requests reconsideration of our decision, Aerostructures, Inc., B-242315, Apr. 17, 1991, 91-1 CPD ¶ 382, in which we denied its protest against the award of a contract to Semcor, Inc. by the Department of the Navy, Naval Air Development Center, under request for proposals (RFP) No. N62269-90-R-0122, for engineering services and material in technical support of air vehicle structure research, design, and development.

We deny the request for reconsideration.

Aerostructures originally protested that the Navy failed to conduct meaningful discussions and that its proposal was improperly excluded from the competitive range. In particular, Aerostructures contended that certain communications between it and the Navy shortly following submission of initial proposals constituted discussions, as opposed to clarifications, and thus triggered a requirement that they be made meaningful by the agency. Aerostructures argued that this requirement went unfulfilled because it was not advised of the deficiencies in its proposal which ultimately formed the basis for the Navy's decision to exclude it from the competitive range.

We denied the protest because we found that the Navy did not engage in discussions with Aerostructures concerning its proposal. It was our conclusion, rather, that the communications between the parties never went beyond the level of permissible clarifications for the purpose of determining whether the proposal should have been included in the competitive range. Furthermore, based upon a close examination of the record, we found that the agency's decision to exclude Aerostructures from the competitive range was reasonable and in accord with the evaluation criteria set forth in the RFP.

In its request for reconsideration, Aerostructures asserts that we failed to consider another argument raised in its protest having to do with "the Navy's improper amendment of the solicitation's evaluation criteria and requirements when it issued, on June 22, 1990, a letter apparently waiving the solicitation's 1-hour proximity requirement."^{1/} Aerostructures maintains in its request for reconsideration that this argument established that the competition for this procurement was not conducted on a fair and equal basis in violation of statute and regulation. Aerostructure states that it strictly adhered to the original requirement by proposing temporary personnel, all of whom were located within the 1-hour radius, whereas other offerors deviated from that requirement based upon the Navy's subsequent written clarification.

As discussed in our original decision, prior to receipt of proposals, the RFP was in fact amended to provide that the successful offeror's workforce had to be located within 1 hour's drive of the Center. Subsequently, however, in response to a prospective offeror's written question, the agency advised in writing that offerors could propose a small number of personnel outside the 1-hour radius, but only on condition that a clear plan to assure responsiveness and economical performance was presented. We did not read Aerostructure's protest to include a challenge to this action of the Navy. Even if we had, however, our conclusion on the merits of the protest would not have been different.

In the first place, had Aerostructures clearly articulated, as a basis for protest, the argument it now makes on reconsideration, we would have found it untimely. Under our Bid Protest Regulations, protests based upon improprieties apparent from

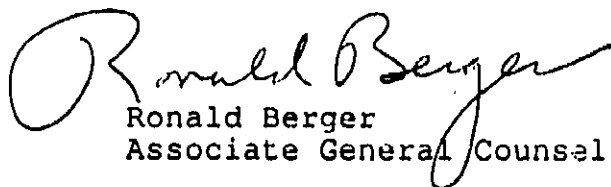
^{1/} The protester's reference to a June 22, 1990, letter appears to be in error. Actually, as the Navy explained in its report and Aerostructures does not dispute, the agency's written response to the question regarding the RFP amendment was transmitted to all offerors prior to the RFP's closing date of May 24, 1990.

the face of a solicitation must be filed not later than the time set for receipt of initial proposals in order to be timely. 4 C.F.R. § 21.2(a)(2) (1991). Aerostructure's argument, in its own words, stems from what it perceives to be an impropriety in the RFP--an alleged inconsistency between the formal solicitation amendment and the later written communication to all offerors regarding the 1-hour proximity requirement which the protester views as an improper and ineffective attempt to amend the RFP. To the extent that Aerostructures found this situation objectionable, it was obliged to have protested prior to receipt of proposals. NKF Eng'g, Inc.; Stanley Assocs., B-232143; B-232143.2, Nov. 21, 1988, 88-2 CPD ¶ 497.

Furthermore, the record does not establish that Aerostructures was prejudiced by its alleged strict adherence to the 1-hour radius location requirement. While Aerostructure's proposal was downgraded for reasons relating in part to its proposed use of temporary personnel, numerous other significant deficiencies existed, and there is no showing that the firm's proposal would have materially changed had it not so adhered to the location requirement.

In short, Aerostructures has failed to present information warranting reconsideration. Thus, reconsideration is not appropriate. See 4 C.F.R. § 21.12(a); Adrian Supply Co.--Recon., B-239681.2, Jan. 29, 1991, 70 Comp. Gen. ___, 91-1 CPD ¶ 79.

The request for reconsideration is denied.


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