



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Four Seas and Seven Winds Travel, Inc.

File: B-244916

Date: November 15, 1991

Mark Pestronk, Esq., Pestronk & Associates, for the protester.

Merritt Lee Murry, Esq., Slocum, Boddie, Murry & Kirk, for Travel International Services, Inc., an interested party. Roger B. Sabin, Esq., Defense Information Systems Agency, for the agency.

Anne B. Perry, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest by firm not in line for award if protest were sustained is dismissed since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under General Accounting Office's Bid Protest Regulations.

DECISION

Four Seas and Seven Winds Travel, Inc. protests the award of a contract to Travel International Services, Inc. under request for proposals (RFP) No. DCA100-91-R-0033, issued by the Defense Information Systems Agency (DISA)¹ for the establishment of a commercially contracted travel management center. Four Seas alleges that Travel International does not possess the required automation system, and has an ex-agency employee on its staff whose presence raises an appearance of impropriety, and that the agency used the concession fee as a "tie-breaker" without disclosing this in the solicitation.

We dismiss the protest.

The solicitation, a total small business set-aside, seeks a travel management center to procure transportation, lodging and other travel related services at an economical cost to the agency. Offerors will provide these travel-related

¹The RFP was issued by the Defense Communications Agency, which officially was renamed on June 25, 1991, as the Defense Information Systems Agency.

services at no cost to the government. In consideration for the contractor's performance, DISA reserves for the contractor the right to make all official travel arrangements authorized by the agency for the term of the contract. The contractor obtains remuneration in the form of commissions paid by commercial airlines, hotels, and other travel providers. For unofficial travel arrangements made by the contractor for agency employees, the contractor will pay DISA a percentage of the commissions it receives from the travel providers.

The RFP provided that proposals would be evaluated according to the following criteria, listed in descending order of importance:

1. Approach for Meeting Government's Stated Requirements, approximately 1/3;
2. Experience/Capabilities, approximately 1/4;
3. Personnel Qualifications;
4. Management;
5. Facilities/Equipment, approximately 1/3 for all three areas.

The RFP further provided that award would be made to the offeror with the ability to best satisfy the government's requirements, and that the concession fee offered to the government would be considered, but was of lesser importance than the specific delineated areas of the technical evaluation.

Five proposals were received in response to the solicitation and, based on the results of the initial technical evaluation which took into account both the technical evaluation results and the concession fee, Travel International's proposal was rated as outstanding and received the highest technical score, and Four Seas' proposal was rated acceptable and ranked third. The contracting officer decided to award without discussions to the highest evaluated offeror, Travel International, since it offered an outstanding proposal and the highest concession fee, totalling 50 percent of their commission on unofficial travel.

Four Seas protested raising three objections to the award determination: (1) Travel International hired an ex-DCA employee, raising the appearance of impropriety; (2) Travel International does not possess the required automation system; and (3) the agency improperly used the concession fee as a tie-breaker without disclosing it in the RFP as such.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(a) (1988), and our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1991), a protester must qualify as an interested party in order to have its protest considered by our Office. Jack Young Assocs., Inc., B-243633, June 20, 1991, 91-1 CPD ¶ 585. An interested party is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. § 21.0(a). A protester will not be deemed an interested party if it will not be in line for award if its protest were upheld. Jack Young Assocs., Inc., supra. Determining whether a party is sufficiently interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Id.

Here, Four Seas has protested the acceptability of Travel International and alleged that the agency used an illegal tie-breaker to conclude that Travel International was entitled to the award. However, the record clearly establishes that no tie-breaker was used because Travel International received a much higher technical score than Four Seas; further, even if the awardee were improperly evaluated, there is an intervening offeror, whose proposal was evaluated as outstanding and received a higher score than the protester's, whose evaluation Four Seas has not challenged.

In its comments on the agency report, Four Seas for the first time argues that "upon information and belief" its proposal was not evaluated in accordance with the disclosed criteria, and it "amends its protest to state that its own proposal was arbitrarily and erroneously evaluated." Specifically, the protester argues that in comparison to the awardee, its proposal demonstrates relatively better ability, experience, and equipment.

These allegations are untimely. Where a protester initially files a timely protest and later supplements or amends it with new and independent grounds of protest, the latter raised issues must independently satisfy the timeliness requirements, since our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Remtech, Inc., 70 Comp. Gen. 165 (1991), 91-1 CPD ¶ 35. Here, Four Seas does not allege that it learned of the new grounds of protest from the agency report, rather it states that on "information and belief" its proposal was improperly evaluated in comparison to Travel International's proposal, considering the evaluation criteria listed in the RFP. The protester had the same information available when it filed its initial

protest, and the agency report did not provide any additional information in this respect which could render the allegation timely.

Where, as here, there is an intervening offeror with a greater interest in the procurement than the protester, we generally consider the protester's interest to be too remote to qualify the protester as an interested party. Airtrans, Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473. Since Four Seas has not contested the technical rating of the intervening offeror, the protester would not be in line for award if its timely filed protest allegations were sustained. Accordingly, Four Seas is not an interested party entitled to protest.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul Lieberman", with a long horizontal flourish extending to the right.

Paul Lieberman
Assistant General Counsel