



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Central Texas College

File: B-245233.5

Date: February 6, 1992

Kathy C. Weinberg, Esq., and Gretchen A. Benolken, Esq.,
Doke & Riley, for the protester.
Linda P. Armstrong, Esq., and Gregory E. Smith, Esq.,
Department of the Army, for the agency.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

A protester who challenges an award on one basis must diligently pursue information that may reveal additional bases for protest--protest based on information revealed months after initial protest was filed, where protester made no effort to obtain such information, is untimely.

DECISION

This decision involves the raising by Central Texas College (CTC) of "newly discovered grounds for protest" against the award of a contract to Resource Consultants, Inc. (RCI) under request for proposals (RFP) No. MDA903-91-R-0040, issued by the Department of the Army for the development, administration and management of job assistance centers. These grounds of protest involve the Army's failure to consider, during proposal evaluation, RCI's alleged inadequate performance on a previous pilot contract and an alleged conflict of interest on the part of an RCI employee, Mr. Steven A. Sultan.

We dismiss the protest as untimely.

CTC argues that this protest is based on testimony given at a December 11, 1991, hearing held in this Office pursuant to section 21.5 of our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.5) in conjunction with two earlier protests filed by CTC

concerning the job assistance center RFP.¹ CTC states that it learned of RCI's prior performance when an employee of RCI testified that RCI was "almost fired" by the Army for its performance on the pilot contract. CTC states that it also learned of Mr. Sultan's conflict of interest at the hearing. CTC maintains that there is nothing in the evaluation record indicating that the agency considered these matters in the evaluation of RCI's proposal.

Under our Regulations, a protest must be filed within 10 working days of when the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Separate grounds of protest asserted after a protest has been filed must independently satisfy the timeliness requirements of our Regulations. Diemaster Tool, Inc., B-238877.3, Nov. 7, 1990, 91-1 CPD ¶ 162.

Although CTC states that the allegation regarding RCI's performance of the pilot contract is based on testimony from the December 11 hearing, CTC knew about the pilot contract at a much earlier date, as in response to a question raised before the closing date for receipt of proposals, a March 27 solicitation amendment informed offerors that RCI had performed the pilot contract. Nonetheless, there is no indication in the record that CTC ever requested information from the agency concerning RCI's performance of the pilot contract by, for instance, filing a Freedom of Information Act request.

A protester challenging an award on one basis must diligently pursue information which may reveal additional grounds of protest. Diemaster Tool, Inc., supra; Atrium Bldg. Partnership--Second Recon., B-228958.3, May 18, 1988, 88-1 CPD ¶ 466; Tymshare, Inc., B-193703, Sept. 4, 1979, 79-2 CPD ¶ 172. Since CTC knew that RCI had held the pilot contract, once it learned of the new award to RCI, CTC was obligated to pursue whatever information might reveal appropriate bases of protest, including information concerning RCI's performance of the pilot contract. Since CTC did not do so, we view its protest on this issue, filed months after it initially protested, as untimely and we will not consider it.

¹In these protests (B-245233 and B-245233.4), CTC argued that proposals were improperly evaluated and that RCI should have been excluded from the competition as a result of an organizational conflict of interest and a personal conflict of interest of Mr. Gerald L. Jenkins, a current RCI employee and a retired Army officer. We denied these protests. Central Texas College, B-245233.4, Jan. 29, 1992, 92-1 CPD ¶ ____.

We also find CTC's allegation of Mr. Sultan's conflict of interest to be untimely. CTC argues that RCI hired Mr. Sultan to work on the job assistance center pilot contract and that Mr. Sultan had been personally and substantially involved in the job assistance solicitation while he was the Army's branch chief in charge of the job assistance program. As a result of this alleged conflict of interest, CTC argues, RCI should have been excluded from the competition.


Although CTC asserts that this issue is timely since it learned of the facts supporting this basis of protest at the December 11 hearing, we believe CTC should have been aware of this basis of protest considerably before December 11. Under a protective order issued in the earlier protests, on September 24 CTC was given a copy of RCI's proposal which included Mr. Sultan's resume. Based on RCI's proposal, CTC knew or should have known of Mr. Sultan's previous duties with the Army.² Thus, since CTC had available to it the information necessary to form this basis of protest on September 24, yet did not protest this matter until December 20, this issue also is untimely.

CTC argues that if this issue is considered untimely, it nonetheless should be considered on the merits under the "good cause" exception to our timeliness regulations. 56 Fed. Reg. 3759, supra (to be codified at 4 C.F.R. § 21.2(c)). The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents it from filing a timely protest. NPF Servs., Inc.--Reccn., B-236841.2, Jan. 3, 1990, 90-1 CPD ¶ 9. CTC argues that allegations by RCI and the Army that CTC has filed spurious protests and statements by RCI counsel arguing that CTC counsel should be sanctioned "exemplify the compelling reasons beyond the protester's control which prevented an earlier filing of this protest

²Mr. Sultan's resume indicated that he was an RCI employee and that he had previously been the chief of the Army's Transition Management Branch. According to his resume, Mr. Sultan "led the Army's efforts to develop a badly needed outplacement program for its soldiers . . . , wrote planning and regulatory documents, designed delivery systems, developed cost estimates, led the federal procurement process, negotiated agreements with other federal and state agencies, [and] directed staff activities." Although CTC argues that Mr. Sultan's resume did not place CTC on notice of a possible conflict of interest, in our view, references in the resume to an "outplacement program" and "the federal procurement process" should have caused CTC at least to diligently pursue additional information. There is no indication in the record that it did so.

ground." We do not see how these statements in submissions by the other parties could have prevented CTC from filing a timely protest.

The protest is dismissed.


Ronald Berger
Associate General Counsel