



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sunbelt Properties, Inc.

File: B-245729.7

Date: October 27, 1992

John Powell Walker for the protester.
Michael D. Weaver, Esq., Department of Housing and Urban Development, for the agency.
Mary G. Curcio, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request does not set forth errors of fact or law in prior decision that warrant reversing or otherwise modifying that decision.

DECISION

Sunbelt Properties, Inc. requests that we reconsider our decision in Sunbelt Properties, Inc., B-235729.5; B-235729.6, June 18, 1992, 92-1 CPD ¶ 528, in which we dismissed as untimely Sunbelt's protest that the Department of Housing and Urban Development (HUD) improperly conducted a procurement for real estate asset management services under request for proposals (RFP) No. 39-91-117.

We deny the request for reconsideration.

The RFP was issued on May 15, 1991, for real estate management of properties owned by or in the custody of HUD in the Oklahoma City area. Proposals were due on July 9. After the technical evaluation panel reviewed the initial proposals, Sunbelt's proposal was eliminated from the competitive range. Sunbelt protested that decision to our Office. By decision dated March 12, 1992, we denied Sunbelt's protest, finding that HUD properly eliminated Sunbelt's proposal from the competitive range because it reasonably determined that Sunbelt did not have a reasonable chance of receiving a contract award.

On March 30, Sunbelt requested that we reconsider that decision. In addition, on April 27, Sunbelt submitted an additional protest to our Office concerning the procurement. In that protest, Sunbelt argued that because the expected

cost of the contract to be performed under the solicitation was in excess of \$500,000, in conducting the procurement the agency was required by its internal regulations to use formal acquisition procedures including establishing a source evaluation board consisting of a chairperson, voting members, and advisors. Sunbelt argued that HUD did not comply with this requirement in that its evaluation board did not include any advisors. Sunbelt also protested that in conducting the procurement, HUD improperly used predetermined cut-off scores to establish a threshold level of acceptability for proposals. Finally, Sunbelt complained that the estimate in the solicitation of the number of properties that the successful contractor would be required to manage was unreasonable.

On June 18, 1992, we denied Sunbelt's request for reconsideration of our earlier decision. We also dismissed as untimely the protest issues Sunbelt raised on April 27. Specifically, we noted that under our Bid Protest Regulations, a protest that is not based on improprieties apparent from the face of the solicitation must be filed no later than 10 working days after the protester knew or should have known the basis of protest, whichever is earlier. 4 C.F.R. 21.2(a)(2) (1992). Although Sunbelt asserted that it learned of these bases of protest on April 20, Sunbelt did not explain how or why that was the case. In contrast, our review of the record showed that both Sunbelt's protest that the evaluation board was improperly comprised and that the agency improperly used a predetermined cut-off score in conducting the procurement were evident from the contracting officer's statement of fact that was dated October 29, 1991, and submitted with the agency's report on Sunbelt's initial protest. Since Sunbelt received that report no later than November 8, 1991, when it submitted its comments on the report, Sunbelt was required to raise these issues no later than November 25, 1991, 10 working days later. Sunbelt, however, did not raise the issues until April 27, and they were therefore clearly untimely.

Sunbelt's protest that the solicitation contained an unreasonable estimate of the number of properties that the successful contractor would be required to manage was also dismissed as untimely. In this regard, a protest based upon an impropriety apparent from the face of an RFP must be filed prior to the time set for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Since the closing date for the receipt of proposals was July 9, 1991, and the estimate was apparent from the face of the RFP, Sunbelt's failure to submit the protest prior to the time set for receipt of initial proposals on July 9 rendered the protest on this issue untimely.

Sunbelt requests reconsideration of this decision. Specifically, Sunbelt argues that there were no express statements or any other information in the contracting officer's statement of fact that was delivered to Sunbelt that demonstrated that the source evaluation board was not properly comprised or that the agency improperly used a predetermined cut-off score to determine the acceptable offers. Sunbelt also argues that it was not apparent that the solicitation contained unreasonable minimum and maximum quantities of properties that the successful offeror would have to manage. In this regard, Sunbelt asserts that HUD's interpretation of the provision was not known from the provision itself.

We find that Sunbelt has not provided a basis for our Office to reconsider our dismissal of its protest. First, insofar as Sunbelt asserts that it was not apparent from the contracting officer's statement of fact that the source evaluation board was improperly comprised or that the evaluation team used predetermined cut-off scores, the fact is that in submitting its protest of these issues to our Office Sunbelt relied on the contracting officer's report and specifically quoted from it. Thus, in its protest, Sunbelt stated:

"In your file B-245729.3, the Contracting Officer's Statement of Fact states: '[t]he Office Manager appointed members to the Source Evaluation Board (SEB) on May 1, 1991. The voting members of the Board are Curtis Myron, Chairperson, with Jerry Cullins, Bill Atkins, Maxine Flowers, and Larry Harris.'"

Sunbelt then used this information to conclude that no advisors were appointed to the board and thus that the board was not properly comprised. Similarly, concerning predetermined cut-off scores, in its protest Sunbelt stated:

"As stated in the Contracting Officer's Statement of Fact, 'on June 4, 1991, [a] sample of the rating plan was distributed to the Board.'"

The contracting officer's statement of fact further stated that on July 30, 1991, "[t]he Board established four levels of rating which would be applied to each proposal evaluated. The four levels correlated to four score ranges: 0-25 (unacceptable); 26-50 (poor); 51-75 (good); and 76-100 (excellent)." Thus, the information Sunbelt used to raise this issue was information that was in the contracting officer's statement of fact that Sunbelt received in response to its initial protest. Accordingly, Sunbelt has not demonstrated that our prior decision

dismissing Sunbelt's protest on these issues is factually or legally incorrect and we will not reconsider that decision. See 4 C.F.R. § 21.12(a).

Concerning Sunbelt's protest that the RFP contained unrealistic minimum and maximum quantities of properties that the successful contractor would have to manage, HUD guaranteed in the solicitation that a minimum of 1 property and a maximum of 1,000 properties would be assigned under the contract. We dismissed Sunbelt's protest as untimely because the minimum and maximum quantities were apparent from the face of the solicitation and Sunbelt did not argue that they were unrealistic until after the closing time set for receipt of initial proposals. Sunbelt argues on reconsideration that its protest was not untimely because it was not clear from the solicitation how HUD interpreted the minimum and maximum quantity provision. Sunbelt's protest, however, was directed at the minimum and maximum quantities that were specifically set forth in the solicitation and which were clearly apparent from the face of the solicitation and, therefore, this ground of protest should have been raised before the closing time set for receipt of initial proposals.

The request for reconsideration is denied.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel