



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

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Decision

Matter of: Alascom, Inc.--Second Reconsideration

File: B-250407.4

Date: May 26, 1993

John F. Bradach, Esq., and Ronald W. Messerly, Esq., Stoel, Rives, Boley, Jones & Grey, for the protester.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Second request for reconsideration of decision dismissing protester's challenge against award to technically acceptable, lowest priced offeror is denied since ground for reconsideration--that General Accounting Office cannot dismiss a protest for failure to state a valid basis of protest unless a full agency report has been submitted by the agency--is without merit.

DECISION

Alascom, Inc. has filed a second request for reconsideration of our decision in Alascom, Inc., B-250407; B-250407.2, Oct. 22, 1992, 92-2 CPD ¶ 273, aff'd, B-250407.3, Mar. 12, 1993, 93-1 CPD ¶ 227, in which we dismissed its protests against the award of a contract to Signal Communications System and Supply, Inc. (SIGCOM) under request for proposals (RFP) No. DCA200-92-R-0046, issued by the Defense Information Systems Agency (DISA) for digital long-haul command and control communication links between various communication sites located in the United States, Guam, Japan and Korea.¹

We deny the second request for reconsideration.

As explained in both our original and reconsideration decisions, we dismissed Alascom's initial protests² since the

¹This system is collectively referred to as the Pacific Consolidated Telecommunications Network (PCTN).

²On September 18, Alascom filed a protest with this Office alleging that SIGCOM's proposal was improperly based on the
(continued...)

protester was not an interested party within the meaning of our Bid Protest Regulations. In this regard, under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement; that is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1993). Here, because the record showed that even if its protests were sustained, two other offerors preceded Alascom in eligibility for award, we dismissed the protests.¹

In its first request for reconsideration, Alascom challenged our conclusion that Alascom would not receive award in the event its protests were sustained. Alascom argued that it had alleged that the agency had treated it and the awardee unequally by rejecting Alascom's alternate proposal while accepting an alternate proposal from SIGCOM. Since the remedy if we sustained the protest on this unequal treatment ground would be to reopen negotiations, Alascom argued that it was an interested party. In response to this argument, we affirmed the dismissal of the initial protests based on our conclusion that Alascom's contention regarding unequal treatment failed to state a valid basis for protest. In its second request for reconsideration, Alascom now argues that it was improper for us to conclude that its unequal treatment argument was without merit without further developing the record by requiring submission of an agency report and comments from the protester.

As explained in our first reconsideration decision, Alascom's unequal treatment argument was premised on a misinterpretation of the requirements of the RFP. Specifically, while Alascom contended that section L,

²(...continued)

use of the Tracking and Data Relay Satellite System (TDRSS) and contending that SIGCOM lacked the permits necessary to access the satellites. On October 8--after receiving a written explanation of the award decision from the agency, as well as a copy of several pages from SIGCOM's proposal--Alascom filed a supplemental protest which alleged that SIGCOM had improperly proposed its primary TDRSS solution and alternate INTELSAT solution in the same proposal package, in contravention of the requirements set forth at section L, paragraph 10, of the RFP.

¹The RFP provided that award would be made to the lowest priced, technically acceptable offeror.

paragraph 10, of the RFP⁴ prohibited offerors from submitting two technical solutions in one proposal package, this provision in fact contained no such prohibition. Rather, by its terms, this paragraph of the RFP merely required each offeror to submit sufficient documentation adequate on its face to demonstrate each proposed technical solution and provide the agency with a sufficient basis from which to evaluate that solution. Moreover, while Alascom's unequal treatment argument was based on a claim that the agency had rejected Alascom's alternate proposal due to the fact that the protester had submitted its alternate technical solution in the same document package as its primary proposal, this simply was not the case; rather, the contracting officer's letter clearly showed that Alascom's alternate proposal was rejected because it consisted solely of an alternate pricing arrangement, without any further technical explanation--and not because it was submitted in the same package as its primary proposal document. In sum, because of its misinterpretation of section L, Alascom's contention that the agency treated it and SIGCOM unequally--by allegedly relaxing this particular RFP requirement for the awardee--did not state a valid basis for protest.

In its second request for reconsideration, Alascom in essence appears to argue that this Office cannot dismiss a protest, as we did Alascom's, based on our conclusion that it fails to state a valid basis of protest, until we have obtained a full agency report and comments from the protester. This argument is without merit.

⁴Section L, paragraph 10 provided in relevant part:

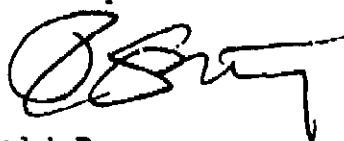

"a. An offeror may submit more than one proposal presenting significantly different basic approaches, provided each proposal submitted meets the mandatory requirements set forth herein. Minor variations in approaches are not considered significantly different approaches.

"b. If the alternate proposals are submitted, each proposal must be (1) clearly labeled and identified on the cover of each separate document therein, (2) prepared in accordance with the preparation format instructions contained in paragraphs 5 and 6 of this section, and (3) submitted concurrently with the offeror's basic proposal Each alternate proposal submitted meeting the above criteria will be separately evaluated in accordance with the criteria set forth in Section M."

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the protest process. Diemaster Tool, Inc.--Recon., 70 Comp. Gen. 339 (1991), 91-1 CPD ¶ 304. To that end, our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient, 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. See Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50. In this regard, our Regulations clearly state that we may summarily dismiss a protest without requiring the agency to submit a report when on its face a protest does not state a valid basis of protest, is untimely, or is otherwise not for consideration by our Office. See 31 U.S.C. § 3554(a)(3); 4 C.F.R. § 21.3(m). Accordingly, when the propriety of such a dismissal becomes clear only after the information is provided by the agency, we may dismiss the protest at that time without receiving the agency report. Id.; Diemaster Tool, Inc.--Recon., supra.

In sum, we will not permit a protester to embark on a fishing expedition for grounds of protest merely because it seeks to dislodge an award from another competitor; since Alascom failed to set forth a legally sufficient basis for its claim of unequal treatment, its protests were properly dismissed.

The second request for reconsideration is denied.


 Ronald Berger
 Associate General Counsel