



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Management Solutions of America, Inc.

File: B-254418.2

Date: April 15, 1994

DECISION

Management Solutions of America, Inc. protests the exclusion of its proposal from the competitive range--and the subsequent award of a contract to Gorman Management Company--under request for proposals (RFP) No. 007-93-118, issued by the Department of Housing and Urban Development (HUD), for real estate asset management services (REAMS) involving agency-owned properties located in north central Oklahoma.

We dismiss the protest.

The RFP was issued on September 21, 1992, as a small business set-aside to 29 offerors, and provided that contract award would be made to the most advantageous offer, with technical merit being considered more important than price.

By the October 21 closing date, eight offers were received and forwarded to a source evaluation board (SEB) for review. On April 15, 1993, based on the SEB's evaluation findings and technical recommendation, the contracting officer included three of the eight submitted proposals in the competitive range--but not the proposal submitted by Management Solutions. That same day, the contracting officer notified Management Solutions and the other unsuccessful offerors that their proposals had been excluded from the competitive range.

On April 20, Management Solutions requested an agency debriefing to learn the basis for the agency's rejection of its proposal. No response was provided by the agency to this request. However, on January 19, 1994, Management Solutions received a letter from the contracting officer--dated January 14--which advised Management Solutions that contract award had been made to Gorman. On January 21, Management Solutions filed this protest with our Office, challenging both its exclusion from the competitive range and the subsequent award to Gorman.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests; these timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. Under our timeliness rules, protests based on other than an apparent solicitation impropriety--such as Management Solutions' challenge to its exclusion from the competitive range--must be filed within 10 working days after the protester knows, or should know, its protest basis. 4 C.F.R. § 21.2(a)(2) (1993). In this regard, to ensure that our timeliness requirements are met, we require protesters to diligently pursue information that would reveal whether a basis for protest exists; where the protester has not diligently or expeditiously pursued the information that forms the basis for its protest, we will not view the protest as timely filed. Westinghouse Elec. Corp., B-246658.2, Feb. 11, 1992, 92-1 CPD ¶ 176.

In this case, Management Solutions filed its protest with our Office on January 21, 1994--9 months after it learned that its proposal had been excluded from the competitive range. Management Solutions contends that its protest nevertheless is timely filed since it could not pursue its competitive range exclusion challenge until it learned the identity of the awardee. Since its protest was filed within 10 working days of the January 14 award to Gorman, Management Solutions contends that its protest is timely. We disagree.

As a general rule, a protester need not protest until it has notice that an agency is intending action that the protester believes to be incorrect or inimical to its interests; that is, a protester need not file a "defensive" protest where an agency has not made a final determination since a protester may presume that the agency will act properly. See Harris Corp. Broadcast Div., B-255302, Feb. 10, 1994, 94-1 CPD ¶ 107; Dock Express Contractors, Inc., B-227865.3, Jan. 13, 1988, 88-1 CPD ¶ 23. Consequently, in appropriate circumstances, a protester may delay filing a protest against a competitive range exclusion until after a debriefing by the agency. See Tandem Computers, Inc., 65 Comp. Gen. 490 (1986), 86-1 CPD ¶ 362 (protest based on information regarding awardee's proposal, first revealed at debriefing, is timely when filed within 10 working days thereafter).

However, as noted above, protesters are required to pursue diligently the information on which their protest is based. Thus, where a protester learns of a concrete agency determination--such as exclusion of the protester's proposal from the competitive range--which conclusively prejudices

the contractor's participation in a procurement, the protester must diligently pursue any protest basis arising from such a determination within 10 working days of the agency's action. This includes diligently pursuing a debriefing so that a protester may determine whether it in fact has a basis for protest, and if so, what that is. Unicom Sys., Inc., B-222601.4, Sept. 15, 1986, 86-2 CPD ¶ 297.

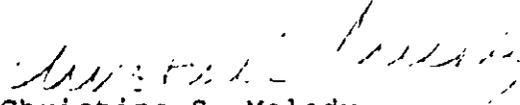
Although Management Solutions contends that it could not protest the exclusion of its proposal from the competitive range until it was able to review the merits of the awardee's proposal, we find this position untenable. The contracting officer's April 15 letter informing Management Solutions of its exclusion from the competitive range unquestionably--and with finality--notified the protester that it was no longer eligible for award. While Management Solutions requested a debriefing on April 20, 1993, it took no further action towards learning additional details as to why its proposal was rejected until January 19, 1994, when it filed this protest.

In our view, Management Solutions failed to diligently pursue the basis for its protest. Although Management Solutions failed to receive any response from the agency to its April 20 debriefing request, it made no further attempt to obtain a debriefing or otherwise learn the specifics of the agency's exclusion determination. Under these circumstances, where the protester delayed investigating any basis for protest until 9 months after it first requested a debriefing from the agency, we conclude that Management Solutions failed to satisfy the requirement for diligent pursuit. See Logitek, Inc; MTX Elecs., Inc., B-241639.2, B-241639.3, May 14, 1991, 91-1 CPD ¶ 466; Eugro Inter, Inc., B-219323, Oct. 2, 1985, 85-2 CPD ¶ 373. While the protester contends that the protest was timely filed after it learned that award had been made to Gorman, the identity of the awardee has no direct relation to the basis of protest, i.e., whether the protester's proposal was properly excluded from the competitive range.

To the extent Management Solutions is challenging award to Gorman, it is not an interested party at this juncture. 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 bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See 4 C.F.R. § 21.0(a). Since Management Solutions has not timely challenged its exclusion from the competitive range, and since it is no longer a competitor under this procurement, even if its protest against the award to Gorman

were sustained, Management Solutions would not be eligible for any award, and thus, is not an interested party to protest award to Gorman. See Shel-Ken Properties, Inc., B-253614, Sep. 10, 1993, 93-2 CPD ¶ 153; Airport Sys. Int'l, Inc., B-252007, Mar. 19, 1993, 93-1 CPD ¶ 249.

The protest is dismissed.


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¹In any event, by decision dated December 14, 1993, we found the agency's award to Gorman to be unobjectionable. See Lancaster & Co., B-254418, Dec. 14, 1993, 93-2 CPD ¶ 319.