



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marine Carriers (USA) Inc.--Reconsideration

File: B-259445.2

Date: April 18, 1995

DECISION

Marine Carriers (USA) Inc. requests reconsideration of our decision of December 28, 1994, in which we dismissed its protest against the Military Sealift Command's (MSC) award of a contract to Ajax Navigacion, SA, under request for proposals No. N62387-95-R-1224, for the charter of a passenger vessel. We dismissed Marine Carriers's protest on the basis that the protester would not be in line for award were its protest to be sustained.

We deny the request.

The solicitation requested proposals for the charter for a period of "about six (6) months" of a "U.S. or foreign flag" passenger vessel or accommodation barge with the capability to carry, berth, and feed a minimum of 750 embarked personnel. The solicitation generally provided that award would be made to the responsible offeror whose technically acceptable proposal offered the best overall value to the government. In response to the solicitation, Marine Carriers offered a 757-berth ship at a per diem rate of \$78,000 and a one-time transit charge of \$187,000 plus \$30,000 per day for the first 30 days, for a cost of approximately \$111.02 per berth per day including meal service. MSC excluded Marine Carriers's proposal from the initial competitive range on the basis that it did not stand a reasonable chance for award because its proposed cost was at least twice as high as the cost of the proposals included in the competitive range. At the conclusion of negotiations, MSC selected Ajax for award based on its offer of a 1,387-berth ship at a per diem rate of \$45,000 with a one-time transit charge of \$180,000, for a cost of \$46.40 per berth per day including meal service.

Marine Carriers argued in its protest that it should have been permitted to submit a revised proposal. According to the protester, it would have offered a larger, 900-berth ship at the same per diem rate (\$78,000) as initially proposed, and with a greatly reduced transit charge, for a cost of approximately \$86.67 per berth per day. (Marine Carriers did not furnish sufficient information for the

agency to determine whether this figure included meal service.) Marine Carriers also argued that MSC's evaluation failed to take into account that it was offering a ship crewed by a predominantly American crew and was improperly based on the total capacity of the ships, rather than on the stated minimum requirement of 750 persons.

We dismissed the protest on the basis that it was clear from the protest that, even if we agreed that Marine Carriers should have been permitted to submit a revised proposal, the prices it would have offered would not have moved it into line for award. Marine Carriers's overall evaluated rate would have remained at least 86 percent higher than Ajax's (and perhaps even higher if Marine Carriers's rate did not include meal service), and would have been substantially higher even if proposals were evaluated only on the basis of the minimum capacity specified in the solicitation. Marine Carriers also did not claim that its vessel would be technically superior in any legitimate respect; although it proposed an American crew, there was no provision in the solicitation according offerors an evaluation preference or bonus based on the nationality of the crew.

In its request for reconsideration, Marine Carriers argues that the dismissal of its protest was improper because our decision was not rendered until the date on which the agency report on the merits would have been due and took into consideration information and documents furnished by the agency in support of its motion to dismiss the protest. In addition, Marine Carriers argues that in concluding that it would not be in line for contract award were its protest sustained, we failed to take into account the fact that the order of offerors may change with discussions and the submission of best and final offers. Marine Carriers further argues that it could have been in line for award, and therefore is interested, because its offer was entitled to an evaluation preference under the Balance of Payments Program. Federal Acquisition Regulation §§ 25.303 and 52.225-7.

The protester's arguments furnish no basis for reconsideration of our dismissal. First, our Bid Protest Regulations provide that:

"Notwithstanding any other provision of this section, when on its face a protest does not state a valid basis for protest or is untimely . . . or otherwise is not for consideration, the General Accounting Office will summarily dismiss the protest without requiring the submission of an agency report. When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained

by the General Accounting Office, it will dismiss the protest at that time. . . ." 4 C.F.R. § 21.3(m).

Thus, our Office may dismiss a protest whenever it appears, whether from the face of the protest or after information is provided by the agency, that it is not for our consideration. Diemaster Tool, Inc.--Recon., 70 Comp. Gen. 339 (1991), 91-1 CPD ¶ 304; Alascom, Inc.--Second Recon., B-250407.4, May 26, 1993, 93-1 CPD ¶ 411; Loque Boston Ltd. Partnership--Recon., B-246796.2, July 2, 1992, 92-2 CPD ¶ 1. Moreover, in this case, we did not simply react to the information provided by the agency--Marine Carriers was afforded an opportunity to comment on the agency's dismissal request.

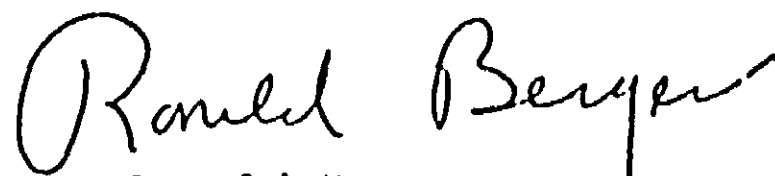
Second, although the order of offerors sometimes changes with discussions and the submission of best and final offers, here it was clear from Marine Carriers's description of its intended revised proposal that it would not have been in line for award and that, therefore, it was not prejudiced by the exclusion of its proposal from the competitive range. In this regard, we note that competitive prejudice is an essential element of a viable protest; where no prejudice is shown or is otherwise evident, our Office will not sustain a protest. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306.

Third, with respect to Marine Carriers's argument that its offer was entitled to an evaluation preference under the Balance of Payments Program, we note that failure to make all arguments or submit all information available during the course of the initial protest undermines the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of both parties' arguments on a fully developed record--and thus is not a basis for reconsidering a decision. See Good Food Serv., Inc.--Recon., B-256526.3, July 11, 1994, 94-2 CPD ¶ 16; Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2; The Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Although Marine Carriers was afforded an opportunity to

respond to the agency's dismissal request, Marine Carriers did not raise this Balance of Payments argument until its request for reconsideration. It therefore would not be a basis for reconsidering our decision. We also note that the Defense Federal Acquisition Regulation Supplement (DFARS) provides that the Balance of Payments Program restrictions "[d]o not apply to services, except services which primarily involve the acquisition of supplies." DFARS § 225.302(a).

In any event, we will not reconsider the dismissal because the matter is currently pending before a court of competent jurisdiction. Subsequent to filing its request for reconsideration at our Office, Marine Carriers filed an action in the United States District Court for the District of Columbia seeking to overturn the award to Ajax on the basis that the exclusion of Marine Carriers's offer from the competitive range was arbitrary and capricious. It is our policy not to decide protests where the matter involved is the subject of litigation before a court of competent jurisdiction unless the court requests our decision. 4 C.F.R. § 21.9(a) (1995); Robinson Enters.--Recon., B-238594.2, Apr. 19, 1990, 90-1 CPD ¶ 402. Since the matter raised by the protest is currently before a court, and there is no indication that the court requests, expects, or is interested in our decision, we will not consider the request for reconsideration. Adams & Assocs. Travel, Inc. et al., B-216673 et al., Feb. 1, 1985, 85-1 CPD ¶ 124.

The request for reconsideration is denied.


 Ronald Berger
 Associate General Counsel