



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Siebe Environmental Controls

File: B-275999.2

Date: February 12, 1997

Robert G. Watt, Esq., Marybeth Z. Gaul, Esq., and Timothy E. Heffernan, Esq., Watt, Tieder & Hoffar, L.L.P., for the protester.

Steven W. Feldman, Esq., for the agency.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office (GAO) will not consider a protest that is based on the protester's belief that it has been and would be a good contractor and that it submitted a proposal that met all necessary criteria at a low price, so that the exclusion of its proposal from the competitive range cannot be reasonable, since a valid protest for purposes of GAO's Bid Protest our Regulations must include a detailed statement of the legal and factual protest grounds. The protester should diligently pursue information that would form a valid basis for protest through other than the bid protest process, *e.g.*, by requesting a debriefing or by a request pursuant to the Freedom of Information Act.

DECISION

Siebe Environmental Controls protests the exclusion of the firm's proposal from the competitive range under Corps of Engineers request for proposals No. DACA87-96-R-0025. We dismiss the protest.

The Corps notified Siebe of the rejection of the proposal by letter of January 2, 1997, which the firm received on January 13. The letter simply advised that Siebe's proposal was determined to be outside the competitive range, containing "various deficiencies and weaknesses which preclude you from having a reasonable chance for award." Siebe protested to our Office on January 17, arguing that, "Upon information and belief, Siebe's offer represents the best value to the Government and met all of the factors or evaluation criteria set forth in the solicitation for award." Siebe further maintained that "Upon information and belief, the Contracting Officer's basis for excluding Siebe from the competitive range is unsupportable," and that the Corps's action therefore "is in violation of law and regulation."

We dismissed Siebe's protest on January 23 because a mere allegation of improper agency evaluation, made "on information and belief" without any supporting explanation or documentation, does not satisfy the requirement in our Bid Protest Regulations, § 21.1(c)(4) and (f), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.1(c)(4) and (f)), that a protester provide a detailed statement of legal and factual grounds for protest. We further stated that if the agency provides Siebe with information that forms the basis for a valid bid protest, the firm may file with our Office at that time.

Siebe re-filed on January 23, still within the 10-day period after having received the Corps's rejection letter,¹ in an attempt to cure the initial filing's deficiency. Siebe states that it is the incumbent contractor for the work, and performs similar work under other contracts. Siebe contends that based on its "personal knowledge" of the solicitation, its own proposal and past performance, and its knowledge of the costs of the work, the Corps simply had to have wrongly eliminated the firm's offer from the competitive range.

Siebe's January 23 filing does not satisfy our Regulations. We recognize that Siebe is in a difficult position in that it does not know why its proposal has been excluded from further consideration other than the offer contained "various deficiencies and weaknesses" that precluded Siebe from having a "reasonable chance for award." Nevertheless, the requirement in our Regulations on which our January 23 dismissal of Siebe's first protest was based contemplates that a protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. This means that we will not accept for further development a protest by a firm that has yet to discover why its proposal has been rejected, but believes there simply can be no rational basis for no longer considering the offer. In such case, the firm must diligently pursue the reasons for the agency's action by, for example, requesting a debriefing or submitting a request to the agency under the Freedom of Information Act. Our Regulations do not permit pursuit of a basis for protest through our bid protest process. See Alascom, Inc.--Second Recon., B-250407.4, May 26, 1993, 93-1 CPD ¶ 411.

The crux of Siebe's protest filing is the firm's belief that it has been and would be a good contractor, and that it submitted a proposal that met all necessary criteria at a low price, so that the exclusion of its proposal from the competitive range cannot

¹Our Regulations, § 21.2(a)(2), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(2)), require that a protest of other than an apparent solicitation impropriety be filed within 10 days after the protester knows or should know its protest basis.

be reasonable. For purposes of our Regulations, however, a valid protest of an evaluation must include an allegation supported by an explanation of how the proposal evaluation was improper. Federal Computer Int'l Corp.--Recon., B-257618.2, July 14, 1994, 94-2 ¶ 24. In this regard, we understand from the Corps that it will not conduct any preaward debriefings in this procurement, so that Siebe may not be able to secure the necessary information until after any award. Siebe then will have 10 days to protest to our Office, consistent with our timeliness rules. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(2)).

The protest is dismissed.

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