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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Franz Rubenbauer Raumausstatter; Malerbetrieb Anastassios Georgiadis

File: B-290317.3; B-290317.4; B-290317.5; B-290317.6

Date: July 16, 2002

Reed L. von Maur, Esq., for the protesters.

Raymond M. Saunders, Esq., and Richard L. Hatfield, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated proposal under business management and past performance factors is denied where record shows proposal was downgraded because it did not include information required by the solicitation.
 2. Fact that agency found protester's quality control plan acceptable under prior solicitation does not establish that downgrading of same plan under current solicitation was unreasonable, since each solicitation stands on its own, and protester does not challenge agency's conclusion that plan was lacking in detail.
 3. Supplemental protest based on information obtained from agency report is dismissed as untimely where the information would have been provided during debriefing held with protester, but protester terminated the debriefing without allowing the agency to fully discuss the inadequacies in its proposal.
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DECISION

Franz Rubenbauer Raumausstatter and Malerbetrieb Anastassios Georgiadis protest the award of a contract to Frank GmbH, Suebersdorf, under request for proposals (RFP) No. DAJA16-02-R-0004, issued by the Department of the Army for cleaning, painting and repairs to flooring in employee housing in Vilseck, Germany. Rubenbauer and Anastassios protest the evaluations of their respective proposals.

We deny the protests.

The solicitation provided for a “best value” evaluation, with paramount consideration given to technical/management capability factors--(in descending order of importance) past performance, business management/organizational structure (with several subfactors) and quality control--and performance risk, rather than price. RFP §§ GFN-215-4000 (a)(b), GFN-215-4006. The agency intended to make award without holding discussions. RFP § GFN-215-4005.

Five proposals, including the protesters’ and the awardee’s, were received and evaluated by a source selection evaluation board (SSEB). Georgiadis’s proposal was rated marginal for past performance, unsatisfactory for business/management, and marginal-minus for quality control--resulting in an overall unsatisfactory rating for the technical/management capability factors--and also was rated very high performance risk. SSEB Evaluation at 2. Rubenbauer’s proposal was rated marginal for past performance, satisfactory-marginal for business/management, and satisfactory-marginal for quality control--for an overall marginal rating for the technical/management capability factors--and was rated very high performance risk. Id. The protesters’ low ratings were based on the agency’s finding that their proposals lacked sufficient detail. Rubenbauer’s and Georgiadis’s prices were the lowest and second lowest, respectively.

The contracting officer made an assessment of the evaluations based on the information from the SSEB, as well as an independent evaluation, and determined that the findings and ratings of the SSEB were accurate. Contracting Officer’s Statement (COS) at 7. The contracting officer performed an award analysis and determined that Frank provided the “best value”; it thus made award to Frank. Following notice of the award, both Georgiadis and Rubenbauer requested and received debriefings, which they each terminated before the Army finished with its review of their proposals. COS at 11. These protests followed the aborted debriefings.

Georgiadis and Rubenbauer challenge the evaluations of their proposals on several grounds. In reviewing an agency’s evaluation of proposals, we will consider whether the agency acted reasonably and consistent with the stated evaluation factors and applicable statutes and regulations. Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 5. We find that the evaluations here were unobjectionable.

GEORGIADIS PROTEST

Business Management/Organizational Structure

Georgiadis maintains that its proposal improperly was downgraded under the business management/organizational structure factor for failing to indicate how all of its listed subcontractors would be used, and for failing to specify which of its

managers would be responsible for quality control, and which would be responsible for project management.¹ Georgiadis asserts that the solicitation did not require offerors to explain how subcontractors would be used, and that, in any event, its proposal did in fact indicate the type of work (cleaning, flooring, painting) for which the subcontractors would be used. With respect to the managers, Georgiadis asserts that its proposal clearly indicated that the named technical managers would be responsible for contract performance, and that the named supervisors would be responsible for quality control. Georgiadis further asserts that its proposal improperly was downgraded for failing to identify all employees allocated to project management and quality control.

The solicitation provided as follows with respect to the business management/organizational structure factor:

The Government will consider the degree to which the proposed organization can effectively provide management supervision and control to meet the requirements under this contract. The Government will be evaluating the proposed organization, the type of management structure (centralized, decentralized), decision processes, relationship between the contract organization and the offeror's organization and the extent to which offeror presented a clear, detailed and functional organizational structure that will ensure effective and efficient contract performance. The proposal should show, at a minimum:

Key positions are identified, their technical qualifications and ability of the English language described and the extent of their authorities stated.

List of all subcontractors needed to perform the services, if any, to include technical support and advice by experts or suppliers.

The evaluation in this area was reasonable. In response to this provision, Georgiadis listed eight subcontractors, and the area in which each would perform. The record shows that the agency downgraded the proposal, not because it could not determine in which areas the subcontractors would perform, but because the proposal did not indicate, for example, how Georgiadis planned to select among the multiple subcontractors. COS-Georgiadis at 9, 12. Georgiadis's proposal received credit for identifying subcontractors--the minimum required by the RFP, but since it did not

¹ Georgiadis also asserts that the agency told it during the debriefing that it proposed too many subcontractors. The agency denies this and asserts that it told Georgiadis that it did not indicate how the subcontractors would be used. Our review of the record does not show that Georgiadis was downgraded for proposing too many subcontractors.

include any information regarding how Georgiadis would select among the subcontractors, or how it would manage the subcontractors during performance of the contract, the agency found no basis for rating the proposal any higher.² Similarly, with respect to key personnel, Georgiadis's proposal was not downgraded because it did not identify all employees allocated to project management and quality control, but because it did not designate any manager as a quality control or project manager. In this regard, there is nothing in the proposal supporting Georgiadis's assertion that it indicated that the technical manager would be responsible for contract performance, and the supervisor for quality control. Rather, the proposal identifies individuals for the management office, technical management, an employee supervisor and an assistant manager, without explaining the job designations or the roles the listed individuals would play in contract performance. We conclude that the agency reasonably downgraded the proposal under this factor.

Quality Control

The agency downgraded Georgiadis's quality control plan based on its finding that the plan was overall very general and did not provide, for example, any details regarding methods for identifying defective materials or services, who would be responsible for quality control, or feedback procedures. COS-Georgiadis at 9. Georgiadis does not challenge the substance of the agency's evaluation; rather, it points out that its quality control plan here was the same one submitted by Rubenbauer, and found acceptable by the Army, under a prior solicitation, and concludes that there thus was no basis for the Army's not finding the plan acceptable here. This argument is without merit. Each procurement action is a separate transaction, and an agency's actions under one procurement are not relevant to the propriety of its actions under another for purposes of a bid protest. Patriot Contract Servs., LLC; Keystone Shipping Servs., Inc.; MTL Ship Mgmt.; V-Ships Marine, Ltd., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 7 n.6. Since Georgiadis has not disputed the substance of the Army's conclusions under the current evaluation, there is no basis for questioning this aspect of the evaluation.

² Georgiadis argues that the agency improperly based its evaluation of Georgiadis's proposed subcontractors, in part, on information provided by Frank to the effect that Georgiadis listed Frank as a proposed subcontractor without first asking Frank whether it would agree to perform as a subcontractor. Georgiadis asserts that it was improper for the agency to discuss this issue with Frank prior to making the award decision and that, in any case, it did in fact contact Frank. However, the record shows that Frank provided this information to the agency by letter dated May 2002, that is, after award was made to Frank on April 12. Since the information provided by Frank was not considered in evaluating Georgiadis's proposal, this argument does not provide a basis for questioning the evaluation or award.

Past Performance

Georgiadis argues that its proposal improperly was downgraded for failing to provide contract numbers for the contracts it listed to demonstrate its past performance; Georgiadis asserts that the solicitation did not require offerors to provide contract numbers.

This argument is without merit. As the agency points out, the solicitation did in fact require offerors to provide contract numbers, as well as a description of the services provided under the listed contract, the period of performance, the name and address of the client, the contracting office, and a brief description of the quality of performance, including problems encountered and corrective actions taken to resolve those problems. RFP § GFN-215-4003 (4)(3). Despite these specific instructions, Georgiadis's proposal included only a list of contracts with the years of performance. The agency found that the omission of the other required information made it almost impossible to evaluate the firm's past performance, except to the extent that the agency was aware of Georgiadis's performance as a subcontractor under Rubenbauer's current contract for the services being procured. OS-Georgiadis at 8.

Given the almost total lack of detail in Georgiadis's proposal with respect to past performance, we have no basis to question the evaluation. In this regard, it is the responsibility of the offeror to provide sufficient information in its proposal regarding the quality and relevance of its past performance so that the agency will be able to conduct a meaningful review of that past performance. Infrared Tech. Corp., B-282912, Sept. 2, 1999, 99-2 CPD ¶ 41 at 5.

RUBENBAUER PROTEST

Rubenbauer asserts that its proposal improperly was downgraded under the business management/organizational structure factor for failing to identify a project manager. Rubenbauer notes that its proposal identified the key positions in all three principal disciplines listed in the solicitation (painting, floor repair and cleaning), and maintains that its listing of Mr. Franz Rubenbauer as the manager on the first line of the staffing and organization plan for all three areas was sufficient to indicate that he would be the project manager. Rubenbauer also argues that the Army should have been aware that Mr. Rubenbauer would be the project manager because he is the project manager on the incumbent contract.

This argument is without merit. While Mr. Rubenbauer was the first name on the list of key personnel, he is not identified as a project manager; rather, he is identified as a "Raumausstattermeister," which, according to the agency (and Rubenbauer does not dispute this), is an interior decorator, COS-Rubenbauer at 8, and there is no discussion of his duties or authority. We thus agree with the agency that there was nothing on the face of the proposal identifying the project manager; the fact that Mr. Rubenbauer was the project manager on the prior contract was not sufficient to

establish that he would be the project manager for this contract. In any case, the record shows that the Army did not downgrade Rubenbauer's proposal under the business management/organizational structure factor simply because Rubenbauer did not name a project manager. Rather, the Army downgraded the proposal because it was generally lacking in detail—the failure to name a contract manager was only one of the missing details. COS-Rubenbauer at 8.

SUPPLEMENTAL PROTESTS

Both Rubenbauer and Georgiadis have raised supplemental protest grounds based on the information contained in the agency reports on their protests. Rubenbauer complains that the agency improperly evaluated its offer of alternate products, its quality control plan, and its past performance. Georgiadis protests the evaluation of its past performance.

Our Bid Protest Regulations provide that protests other than those based on alleged solicitation improprieties must be filed not later than 10 days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (2002). However, even where a protester files a protest within 10 days after it learns the basis of protest, the protest will be judged timely only if the protester diligently pursued the information on which the protest was based. United Int'l Investigative Servs., Inc., B-286327, Oct. 25, 2000, 2000 CPD ¶ 173 at 3. Thus, a protester cannot passively await information providing a basis for protest; rather, a protester has an affirmative obligation to diligently pursue such information, and a protester's failure to utilize the most expeditious information gathering approach may constitute a failure to meet its obligation in this regard. Id.

Here, the protesters were provided debriefings on April 23, 2002, and they filed their initial protests within 10 days thereafter. Although the protesters subsequently obtained the information underlying their supplemental protests from the agency reports, it is apparent from the record that this same information was available at the time of their debriefings. In this regard, the agency has provided outlines prepared by the contracting officer in preparation for the debriefings. COS-Rubenbauer at 10, COS-Georgiadis at 11. These outlines show that the contracting officer planned to discuss with Rubenbauer, among other things, its inadequate quality control plan, past performance, and the lack of information with respect to alternate products it offered, and with Georgiadis, among other things, its past performance. In other words, the agency was prepared to discuss with the protesters all of the areas of their evaluations that they now challenge in their supplemental protests. As indicated above, the Army reports, and neither protester denies, that the contracting officer was unable to discuss these matters during the debriefings because both protesters terminated their debriefings prematurely. COS-Rubenbauer at 10-11; COS-Georgiadis at 11. It is our view that the protesters, by failing to avail themselves of readily available information at the debriefings, failed to diligently pursue the information on which their supplemental protests are based. Under these circumstances, we consider the supplemental protests untimely, and will not

consider them. See United Int'l Investigative Servs., Inc., supra (protester did not diligently pursue protest where it could have received a pre-award debriefing, but instead choose a post-award debriefing, and protester would have learned the basis of its protest from the pre-award debriefing); Automated Med. Prods. Corp., B-275835, Feb. 3, 1997, 97-1 CPD ¶ 52 at 3-4 (no diligent pursuit where protester sought information under Freedom of Information Act instead of requesting a debriefing upon notice of award).

The protests are denied.

Anthony H. Gamboa
General Counsel