Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Northrop Worldwide Aircraft Services, Inc.--Reconsideration

File: B-262181.3

Date: June 4, 1996

J. William Eshelman, Esq., and Michael C. Poliner, Esq., Feith and Zell, for the protester.
Devon E. Hewitt, Esq., and R. Timothy Hanlon, Esq., Shaw, Pittman, Potts & Trowbridge, for Loral Training and Technical Services, Inc., an interested party.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision denying protest on ground that protester was not prejudiced by agency's failure to hold meaningful discussions is denied where the record showed that there was no reasonable possibility that protester was prejudiced; protester's attempt in request for reconsideration to demonstrate prejudice provides no basis for reconsidering decision given that protester had available to it during the course of the initial protest information that would have allowed it to present specific and credible support for its position, but failed to do so.

DECISION

Northrop Worldwide Aircraft Services, Inc. requests reconsideration of our decision in Northrop Worldwide Aircraft Servs., Inc., B-262181, Oct. 27, 1995, 95-2 CPD ¶ 196, denying its protest of the award of a contract to Loral Training and Technical Services under request for proposals (RFP) No. F26600-94-R-0172, issued by the Department of the Air Force for the operation and maintenance of electronic threats and targets on the U.S. Air Force Weapons and Tactics Center Range Complex at Nellis Air Force Base, Nevada.

We deny the request for reconsideration.

Proposals were evaluated with respect to technical merit, current and past performance, and cost, listed in descending order of importance. The technical merit factor and its subfactors were evaluated using both color/adjectival ratings and proposal risk ratings. The color/adjectival ratings represented the evaluators' views as to an offeror's understanding of and compliance with the requirements, as well as the soundness of its approach. The proposal risk ratings represented

the risks associated with each proposal.[1] Offerors' current and past performance proposals were evaluated using these same color/adjectival ratings, as well as performance risk ratings of high, moderate, low, or not applicable. Cost proposals were evaluated for realism and reasonableness. Award was to be made to the offeror whose proposal was most advantageous to the government.

The evaluation of the best and final offers (BAFO) of Loral and Northrop yielded the following results:

	Loral	**Northrop**
Technical Merit	**Green\Low**	**Green\High**
Operations	Blue\Low	Green\High
Maintenance	Green\Low	Green\Moderate
Management	Green\Low	Blue\Low
Logistics	Green\Low	Green\Low
Technical Innovation	Blue\Low	Blue\Low
Current\Past Performance	**Blue\Low**	**Green\Moderate**
Evaluated Cost	**$85.8 million**	**$69.7 million**

The source selection authority (SSA) determined that, while Northrop offered the lowest cost with an acceptable technical approach, its "aggressive manning posture" presented a risk to schedule, cost and performance, especially in the two most important technical areas of operations and maintenance. Further, while Northrop had an acceptable performance history, it posed a moderate risk to schedule, cost and management. The SSA stated that, given its aggressive manning, Northrop might require significant, serious intervention in terms of money and management oversight. The SSA concluded that Northrop's lower cost was not worth the high

[1]The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable. The proposal risk ratings were high, moderate, or low.

proposal risk and moderate performance risk,[2] and that Loral's proposal represented the best value to the government.

In its protest, Northrop argued that the Air Force improperly failed to discuss with the firm the concerns over its "aggressive manning posture" which led to its high risk technical merit rating. We agreed. The record showed that Northrop's proposal was downgraded under the risk element of the operations and maintenance subfactors for its "aggressive manning posture"--or low staffing levels--and that this criticism was a significant factor in the selection decision. We concluded, however, that Northrop was not prejudiced by the Air Force's failure to raise these issues with the firm. Northrop's request for reconsideration disagrees with this conclusion. Specifically, Northrop argues that we failed to apply the presumption of prejudice that follows from a finding of inadequate discussions, and that the record establishes that there was a reasonable possibility that its proposal's technical rating would have improved had adequate discussions been held.

Competitive prejudice is an essential element of every viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Where improper discussions were held, we will resolve any doubts concerning the prejudicial effect of the agency's actions in favor of the protester; a reasonable possibility of prejudice is a sufficient basis for sustaining the protest. National Medical Staffing, Inc., B-259402; B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163. On the other hand, where no reasonable possibility of prejudice is shown or is otherwise evident from the record, our Office will not sustain a protest, even if a deficiency in the procurement is apparent. MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306.

As stated in our decision, we concluded that the record failed to show a reasonable possibility of prejudice to the protester due to the lack of discussions. First, we found no evidence that discussions might have enabled Northrop to improve its proposal's technical merit rating from green to blue. The technical evaluators' negative comments as to operations and maintenance were specifically linked to proposal risk, not to the considerations reflected in the color rating (the offeror's understanding of and compliance with the requirements, as well as the soundness of its approach).[3] Thus, even if Northrop had been apprised of the Air Force's

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[2]High proposal risk is defined in the RFP as "[l]ikely to cause significant serious disruption of schedule, increase in price, or degradation of performance even with special contractor emphasis and close government monitoring." Moderate performance risk is defined as "some doubt exists, based on the offeror's performance record, that the offeror can perform the proposed effort."

[3]Northrop's assertion that the agency "admitted" a link between its staffing approach (continued...)

concerns with its "aggressive manning posture," and improved its proposal's risk rating as a result, the maximum rating its proposal would have received had it alleviated these concerns is green/low, the same as Loral's. Second, the record showed that the current and past performance ratings were pivotal in the SSA's source selection decision, and Loral's ratings in this regard significantly exceeded those of Northrop. Finally, we were not persuaded by Northrop's argument that the cost difference between the two proposals supported a finding of prejudice, as the cost difference unquestionably would be narrowed by any addition of personnel to Northrop's proposal.

In sum, we did not consider this to be an instance where prejudice was evident from the record. Accordingly, this was not an appropriate case in which to presume prejudice from the lack of discussions. On the contrary, where, as here, prejudice is not otherwise evident and the protester has sufficient information to show a reasonable possibility of prejudice and fails to do so, relying solely on general allegations of prejudice, our Office will deny the protest. Compare Colonial Storage Co.--Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335; Labrador Airways Ltd., B-241608, Feb. 13, 1991, 91-1 CPD ¶ 167.

Counsel for Northrop had at its disposal (pursuant to a protective order issued in this case) voluminous information related to proposal evaluation and source selection, including the complete evaluation documentation of its initial and revised proposals, as well as its BAFO, and all documentation related to the award decision. Northrop did not use this information to show how appropriate discussions could have improved its proposal's technical merit rating from green to blue. Instead, Northrop relied on the generalized statement that, "[t]he presumption [of prejudice] is hardly necessary in this case because the prejudice is so manifest." The bulk of Northrop's arguments with respect to prejudice concerned the subject of its supplemental protest challenging its current and past performance rating, a protest which we dismissed as untimely during the pendency of the initial protest. That the Air Force's pleadings with respect to prejudice also focused on this issue did not relieve the protester of the burden of arguing that it was prejudiced here. The

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[3](...continued)
and the color rating by lowering its color rating under the maintenance subfactor from blue in the initial evaluation to green in the final evaluation, after the firm reduced its maintenance staffing, is not clearly supported by the record. Notwithstanding the use of the word "blue" in some areas of the initial evaluation documentation, the full narrative evaluation report shows that Northrop's proposal was rated green here, just as it was throughout the evaluation process. Moreover, the weaknesses noted in the final report were the same as those noted in the initial report, indicating that any revision in the color rating was not due to the decrease in maintenance staffing.

protester was clearly aware of the two distinct aspects of the technical merit evaluation, and should have been cognizant of the need to show why its proposal could have improved with respect to the non-risk aspect.

Under the Bid Protest Regulations applicable to this matter, a request for reconsideration must specify alleged errors of law made or information not previously considered by our Office. 4 C.F.R. § 21.12(a) (1995). In order to provide a basis for reconsideration, information not previously considered must have been unavailable to the party seeking reconsideration when the initial protest was being considered. Department of the Army--Recon., B-254979.2, Sept. 26, 1994, 94-2 CPD ¶ 114; Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. A party's 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 the parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Id. Here, Northrop's request for reconsideration is based on information and arguments that were available during the initial protest, but not presented at that time. That is, during the initial protest Northrop could have explained why it believed that appropriate discussions could have improved its technical merit rating from green to blue. Under the circumstances, Northrop's request does not provide a basis for reconsideration. Department of the Army--Recon., supra.

The request for reconsideration is denied.

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