Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tidewater Marine, Inc.--Reconsideration

File: B-270602.5

Date: June 25, 1996

William J. Spriggs, Esq., Spriggs & Hollingsworth, for the protester.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest for failure to state a valid basis is affirmed where protest lacked detail supporting protester's contention that work commencement date in solicitation exceeded agency's minimum needs since protest at a minimum must set forth sufficient detail establishing the likelihood that the agency's determination of its minimum needs was improper.

DECISION

Tidewater Marine, Inc. requests reconsideration of our May 17, 1996, dismissal of its protest under request for proposals (RFP) No. N62387-96-R-1303, issued by the Department of the Navy, Military Sealift Command, for tugboat services to support live firing exercises in the Mayport, Florida region.

We affirm our dismissal.

On May 15, Tidewater filed a protest at this Office challenging the RFP's scheduled June 16 work commencement date as unduly restrictive. We dismissed Tidewater's protest in accordance with our Bid Protest Regulations, which require that a protest include a detailed statement of the legal and factual grounds for protest, 4 C.F.R. § 21.1(c)(4) (1996), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(f).

In our dismissal, we first concluded that Tidewater's protest was legally insufficient because its premise for challenging the work commencement date--Tidewater's apparent belief that the agency would award the contract less than 30 days before contract performance was scheduled to begin--was not supported by the record, which showed that the agency was in the process of making contract award on May 15, the date Tidewater's protest was filed. We also concluded that Tidewater had failed to set forth a valid basis for protest since it did not articulate how or why the proposed work commencement date was unduly restrictive. Although

Tidewater generally complained that only the incumbent could comply with the scheduled work performance date, the protester did not otherwise explain why it was unable to meet the scheduled work commencement date deadline, nor did it indicate how the work commencement date exceeded the agency's minimum needs.

On reconsideration, Tidewater asserts that its protest should not have been dismissed because in advancing its contention that the work commencement date specification was unduly restrictive, it was not required to indicate how the work commencement date exceeded the agency's minimum needs. Relying on our decision in Yale Materials Handling Corp., B-230209, Mar. 23, 1988, 88-1 CPD ¶ 302, Tidewater asserts that where a protester challenges a delivery date specification--analogous to this solicitation's work commencement date--a prospective offeror "cannot know what has caused an agency to constrict the delivery schedule so as to restrict competition," and consequently, a protest challenging such a requirement need not indicate how it exceeds the agency's minimum needs. Instead, Tidewater asserts, the burden is initially on the procuring agency to establish prima facie support for its contention that the work commencement date reasonably relates to its minimum needs.

The precedent cited by Tidewater only applies where the preliminary protest pleadings provide a legally sufficient basis to support the challenge. Unlike Yale where we viewed the protester as having alleged sufficient facts to call into question the terms of the solicitation, Tidewater, beyond its general objections to the scheduled work commencement date, never articulated precisely why it exceeded the agency's minimum needs, or how the requirement should have been modified to make it acceptable. Tidewater's protest thus failed to set forth any detail establishing the likelihood that the agency's determination of its minimum needs was improper. Therefore, it properly was dismissed as legally insufficient. See International Health Management Corp.--Recon., B-254468.2, Sept. 24, 1993, 93-2 CPD ¶ 183.

Further, as noted above, the protester's factual basis for challenging the specification--that award would be delayed for approximately 2 weeks--was incorrect. On May 16, 1 day after Tidewater filed its protest, the agency advised this Office that it had been in the process of awarding the challenged contract, and that despite Tidewater's protest, a contract award would be made by May 17. In its reconsideration request, Tidewater does not challenge this portion of our decision.

Consequently, on this ground alone, Tidewater's protest was properly dismissed as failing to state a valid basis. See Alascom, Inc.--Second Recon., B-250407.4, May 26, 1993, 93-1 CPD ¶ 411.

The prior dismissal is affirmed.

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