



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ASI Personnel Services, Inc.--Reconsideration

File: B-258537.8

Date: October 31, 1995

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DIGEST

Request for reconsideration is denied where requesting party reiterates arguments raised during the initial protest, raises arguments that could have been, but were not, raised during the initial protest, and otherwise does not demonstrate that the decision contains errors of fact or law.

DECISION

ASI Personnel Services, Inc. requests reconsideration of our decision, ASI Personnel Servs., Inc., B-258537.7, June 14, 1995, 95-2 CPD ¶ 44. In that decision we denied in part and dismissed in part ASI's protest against the award of a contract to Pentad Corporation under request for proposals (RFP) No. DAAG60-94-R-0017, issued by the United States Military Academy (USMA) at West Point for mess attendant services.

We deny the request.

The solicitation provided for award to the offeror whose proposal represented the best value to the government, based on an integrated assessment of the following evaluation factors that were listed in descending order of importance: management and staffing; quality control; and cost. After best and final offers were submitted and evaluated by the source selection evaluation team (SSET), the source selection authority (SSA) chose Pentad for award based on a proposal that was acceptable under each evaluation factor and was priced \$800,000 lower than the most highly rated proposal. ASI protested that the agency misevaluated ASI's and Pentad's proposals and was biased against ASI.

EVALUATION OF ASI'S PRICE PROPOSAL

In its request for reconsideration, ASI argues that our decision ignored ASI's argument that the SSET improperly rated its price proposal as marginal. We did not

ignore this issue. Rather, the record showed that, in reviewing the evaluation results, the SSA changed this rating to acceptable. Accordingly, we saw no need to discuss ASI's argument.

MANAGEMENT/STAFFING EVALUATION

In its protest, ASI argued that its proposal should have been rated good rather than acceptable under the management/staffing factor. ASI based this assertion on its status as the incumbent, and the fact that its project manager had 12 years of experience performing the USMA mess attendant contract. The agency rated ASI acceptable for this factor based on ASI's performance as the incumbent--which was adequate, but during which ASI did not always respond to the agency's requests for information--and ASI's satisfactory performance on smaller mess attendant contracts. We found that the agency's decision was reasonable.

On reconsideration, ASI again argues that its performance should have been rated higher than acceptable based on its status as the incumbent and the experience of its project manager. ASI also argues that the deficiency in its performance under the incumbent contract was minor and easily correctable.

ASI's argument regarding its experience as the incumbent was specifically addressed in our prior decision. ASI's argument regarding the impact of the deficiency in its performance under the incumbent contract could have been raised during the initial protest but was not. Accordingly, neither argument provides a basis for reconsideration. See Pilkington Aerospace, Inc.--Recon., B-259173.2, May 15, 1995, 95-1 CPD ¶ 242.¹

ABANDONED ISSUES

In its protest, ASI argued that (1) under the management/staffing factor USMA improperly rated proposals based on the number of years of experience an offeror had, and (2) the agency misapplied the rating standards in evaluating its proposal as only acceptable under the quality control factor. In our decision, we found that ASI had abandoned these two issues because in its comments in response to the agency's protest report ASI did not reply to the agency's position on these issues.

¹ASI also argues that we ignored its argument that its performance on the smaller contracts on which the agency relied should have been rated higher than satisfactory. As explained in our prior decision, we did not consider this challenge to the evaluation of ASI's past performance because it was raised more than 10 working days after ASI learned the basis of protest, and thus was untimely. See 4 C.F.R. § 21.2(a)(2) (1995).

ASI argues that we improperly concluded that it abandoned these issues. ASI points to page 6 of its March 16, 1995, comments (the comments submitted in response to the first of two agency reports) to demonstrate that it did not abandon the first (experience) argument. Page 6, as relevant, reads as follows:

"In its December 29, 1993 protest, ASI reviewed the comments of the USMA's officials at the debriefing held on December 23, 1994, including the irrational and arbitrary standard articulated at that debriefing by USMA officials regarding past performance, in which they asserted that five years of experience established a presumptive rating of Acceptable and that an offeror would only be given a higher rating if it offered some additional, innovative or significant advantage to the USMA."

We concluded that ASI abandoned the years of experience argument because, while ASI referenced this argument, it did not substantively respond to the agency's assertion that it did not base the experience rating on years of experience. In any case, as discussed above, and in our decision, the agency properly determined that ASI's proposal should be rated only acceptable under the management/staffing factor based on factors other than the number of years of experience ASI had.

As for the second (quality control) argument, in its initial protest ASI argued that the agency misapplied the evaluation standards in rating its proposal acceptable rather than good under the quality control factor. ASI complained that the agency would rate a proposal higher than acceptable under the quality control factor only if it offered significant advantages to the agency beyond the requirements of the solicitation. ASI also submitted a supplemental protest in which ASI reiterated its protest that the agency misapplied the rating standards in evaluating ASI's proposal under the management/staffing and quality control factors. We considered the quality control issue abandoned because, in its comments in response to the agency's supplemental report, ASI did not address the issue of the rating of its proposal under the quality control factor.

In any case, in questioning the quality control evaluation, ASI simply argued that the agency did not fairly evaluate ASI's proposal under the quality control factor because it did not properly apply the rating standards; it did not explain why its proposal merited a higher rating, or otherwise challenge the evaluation under this factor, even though it had access to the evaluation documents which explained the basis of the agency's rating. Under these circumstances, we would have no basis to question the agency's evaluation of ASI's proposal as acceptable under the quality control factor.

HISTORICAL DATA

The solicitation provided technical exhibits with historical information regarding the number of meals for each type of service that had been provided for an entire fiscal year for offerors to use in preparing their price proposals. In its protest, ASI alleged that, as the incumbent, it recognized that the historical information in the solicitation was inaccurate. When ASI informed the agency of this, the agency urged ASI to base its proposal on its own information; ASI did so, to its alleged competitive prejudice. We dismissed this issue as untimely, since it essentially was based on the inclusion of allegedly inaccurate information in the RFP, but was not protested until after the closing time for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).

On reconsideration, ASI argues that we misread its argument; it was protesting not the inaccurate estimates in the solicitation, but the fact that the agency's evaluation criticized ASI, but not Pentad, for using data other than that provided in the solicitation, indicating that the agency was biased against ASI.

This argument is without merit. ASI's initial protest stated that:

"The USMA urged ASI to develop its pricing based on its use of ASI's historical data on average numbers of meals served during ASI's period of contract performance, because the historical data provided by USMA in the RFP was inaccurate and unusable. At the same time, the USMA officials knew that this would give rise to pricing decisions by ASI which would be based on different assumptions regarding historical data from that used by the other offerors."

ASI also argued that the agency should have provided the accurate information to all offerors. Thus, ASI clearly protested that the solicitation contained inaccurate data, and that offerors would possibly be basing their prices on different information. This basis of protest was properly dismissed as untimely for the reason stated in our prior decision.

ASI did also argue in its supplemental protest that the agency's inconsistent treatment of ASI and Pentad with respect to the use of data other than that provided in the solicitation demonstrated bias. That argument was addressed (even though not separately identified) in the portion of our decision devoted to the bias ASI alleged. (This issue is discussed further below.)

BIAS

In its protest, ASI argued that the agency was biased against it. To support this position ASI pointed to the tone of the current contracting officer's statement

provided with the protest report; a statement by the contracting officer on ASI's incumbent contract that ASI understated its costs; the fact that at the debriefing ASI was told that its cost proposal was rated marginal instead of acceptable; and inconsistent treatment by USMA of ASI's and Pentad's failure to use the historical information provided in the solicitation in preparing their price proposals. We found no basis for the allegation of bias because neither the contracting officer's tone nor the report of understated costs demonstrates that the procurement officials involved intended to harm ASI. Further, since neither of the allegedly biased contracting officers took part in the evaluation of proposals or the award decision, and we found that the evaluation of ASI's proposal was otherwise reasonable, any alleged bias did not harm ASI.

On reconsideration, ASI asserts that the contracting officer on the current contract led the discussions, and thus was in fact in a position to affect the evaluation and award decision. This argument ignores the most significant basis for our prior conclusion--whether or not the contracting officer was in a position to affect the outcome of the procurement, there was no evidence that the contracting officer was biased, or that she in any way improperly influenced the evaluation or award. Further, we specifically found that even if there was some showing of bias, the evaluation of ASI's proposal was not shown to be unreasonable; absent some harm, the existence of bias would not be a basis for sustaining a protest.

ASI also cites additional examples of bias not discussed in our decision, including the agency's failure to reject Pentad's offer for not providing the required period of time; the agency's failure to reject Pentad's offer because it was improperly conditioned on receiving progress payments, and the agency's alleged miscalculation of Pentad's past performance. These arguments were not raised until April 12 when Pentad submitted its comments on the supplemental agency report. Since the record demonstrated that ASI was aware of the arguments in February, they were untimely then, and certainly do not support a request for reconsideration now. Dial Page, Inc., B-256210, May 16, 1994, 94-1 CPD ¶ 311; See Earle Palmer Brown Cos., Inc.--Recon., B-243544.3, Mar. 2, 1992, 92-1 CPD ¶ 246. In any case, as with ASI's original arguments, there is nothing in the record showing that the manner in which the agency treated Pentad's proposal was motivated by bias against ASI.

Interested Party Status

In our decision, we found that ASI was not an interested party to raise issues regarding the evaluation of the awardee's proposal and the award decision because the proposal of another offeror (identified as Offeror E) was the highest rated technically, and was \$1.5 million lower in cost than ASI's; Offeror E thus would have been in line for award if ASI's protest on these issues were sustained. ASI argues that our decision is erroneous because the agency did not rank the offerors, and it thus is not clear that Offeror E would have been next in line for award.

While the agency did not formally rank the offerors, the evaluation documents showed that the SSA rated Offeror E's proposal the highest, and chose Pentad for award only because its proposal was \$800,000 lower priced than Offeror E's. Therefore, had Pentad not been chosen as the awardee, it was clear that the SSA would have made award to Offeror E, whose proposal was higher rated and lower in cost than ASI's. Accordingly, we correctly found that ASI was not an interested party to raise these issues.

The request for reconsideration is denied.

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