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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kreonite, Inc.—Request for Reconsideration

File: B-222439.2

Date: September 10, 1986

DIGEST

Prior decision denying protest is affirmed where protester has not shown any error of fact or law which warrants reversal.

DECISION

Kreonite, Inc. (Kreonite) requests that we reconsider our decision in Kreonite, Inc., B-222439, July 11, 1986, 86-2 C.P.D. ¶ 60, in which we denied Kreonite's protest of defects in request for proposals (RFP) No. F42600-86-R-71090, issued by the Air Force for photographic processors and other associated items, and support and technical services. We affirm our decision.

Kreonite originally protested that the RFP was defective because it did not contain evaluation criteria stating the relative importance of the Air Force's requirements. We denied Kreonite's protest, because the RFP, which provided that award would be made on the basis of "price and other factors," stated the agency's minimum requirements, and the importance of those requirements. We referred to two of our previous decisions, which held that when a solicitation specifies that award will be made on the basis of "price and other factors," award must go to the lowest-priced responsible offeror whose proposal is determined technically acceptable.

In its request for reconsideration, Kreonite asserts that our July 11, 1986 decision disregarded the requirements for identifying evaluation criteria of the Competition in Contracting Act of 1984 (CICA) (10 U.S.C. § 2301, *et seq.* (Supp. III 1985)) and implementing regulations in Part 15 of the Federal Acquisition Regulation (FAR), and instead rested on two decisions which predated the CICA and the current FAR.

Kreonite's concern that we relied on outdated laws and regulations is not justified. As CICA's legislative history shows, CICA's "evaluation and award procedures for sealed bids and competitive proposals . . . are largely the same as those in the Armed Services Procurement Act and the Federal Property and Administrative Services Act for formal advertising and negotiation." H.R. Rep. No. 98-861, 98th Cong., 2nd sess. 1429.

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Furthermore, the FAR both before and after the passage of CICA, as well as the Defense Acquisition Regulation (DAR), required that the relative importance of evaluation factors be stated, including cost or price. See 48 C.F.R. § 15-406-5(c) (1984) and (1985); DAR § 3-501 et seq., reprinted in 32 C.F.R. pts. 1-39 (1983). Thus it is clear that the law regarding evaluation criteria has not materially changed since we issued the two decisions to which Kreonite refers.

Kreonite also reiterates arguments made in its original protest that the RFP's requirement for stainless steel processor tanks was contrived so as to result in a sole-source award to Hope Industries, Inc., which manufactures processors with stainless steel tanks. Kreonite argues that no engineering basis exists for the Air Force's preference for stainless steel tanks in permanently installed equipment, which comprises 90 percent of equipment being procured.

While the Air Force stated it required stainless steel tanks because of the units being transported and subjected to hostile environments, it also cited past experience where plastic tanks or racks had melted down because of defective temperature control units. This latter rationale would apply to permanently installed units as well as to movable units. In order to prevail in a request for reconsideration, the requester must convincingly show either errors of fact or of law in our earlier decision. 4 C.F.R. § 21.12(a) (1986). Kreonite has shown neither here.

The prior decision is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel