The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diversified Computer Consultants--Request for Reconsideration
File: B-230313.3

Date: September 20, 1988

DIGEST

Request for reconsideration of a decision denying a protest is denied where the protester has demonstrated no error of fact or law.

DECISION

Diversified Computer Consultants (DCC) requests reconsideration of our decision in Diversified Computer Consultants, B-230313; B-230313.2, July 5, 1988, 88-1 CPD ¶ 5, denying in part and dismissing in part DCC's protest of an award of a contract to CCL, Inc., by the United States Army Systems Selection and Acquisition Activity, for the "Corps/Theatre Automatic Data Processing Service Center-I Maintenance Program." This program includes the maintenance of 12 van-mounted computer systems located in the United States and Germany. Although numerous protest bases were dismissed or denied in our prior decision, DCC's request for reconsideration specifically challenges only two of our conclusions.

We deny DCC's request for reconsideration.

DCC disputes our denial of its protest that CCL was ineligible for award on this procurement set aside for small business concerns because CCL's personnel would not perform at least 50 percent of the maintenance labor services as required by 15 U.S.C. § 644(o) (Supp. IV 1988), and Federal Acquisition Regulation (FAR) § 52.219-14 (FAC 84-31). FAR § 52.219-14, which essentially mirrors 15 U.S.C. § 644(o), states:

> "By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

> (a) Services (except Construction). At least 50 percent of the cost of . . . personnel shall be expended for employees of the concern."

Since a preaward survey and CCL's proposal indicated that CCL may not comply with this requirement, the contracting officer received explanations and assurances that CCL could meet the requirement. We found these explanations and assurances reasonably indicated to the contracting officer that CCL would comply.

DCC disagrees and argues that the evidence of record (i.e., the preaward survey) conclusively shows that a subcontractor, IBM, would perform approximately 70 percent of the contract. However, as we pointed out in our prior decision, FAR § 52.219-14 does not require CCL to perform at least 50 percent of the work, but rather requires "at least 50 percent of the cost of contract performance incurred for personnel [to] be expended for employees of the concern."

In its request for reconsideration, DCC misinterprets our decision as permitting the consideration of nonpersonnel costs, such as spare parts, in determining compliance with FAR § 52.219-14. In fact, however, our decision says the opposite; that only costs incurred for personnel were to be considered in determining an offeror's compliance with this provision. The reference in our decision to spare parts refers to IBM's performance under the contract.

DCC also states that we "apparently overlooked" the fact that this was primarily a maintenance contract. However, both our Office and the contracting officer were fully cognizant of the nature of this contract.

Contrary to DCC's contention, the contracting officer's determination that CCL could comply with this provision concerns CCL's responsibility, and thus involves a wide degree of discretion and business judgment. While CCL contends that the contracting officer should not have been satisfied by the assurances he received from CCL during discussions and disagrees with the contracting officer's judgment in this matter, DCC's contentions are merely reiterations of arguments previously made and considered in reaching our prior decision. In any case, DCC has demonstrated no error of fact or law that would cause us to reconsider this matter.

The second point on which DCC requests reconsideration is its contention that CCL cannot meet the solicitation's response time requirements. In this regard, DCC notes that

the standard IBM schedule contract provides for response times in excess of the RFP requirements. As stated in our prior decision, not only did CCL specifically address its ability and willingness to meet the response time requirements in its proposal, this was the subject of discussions between the Army and CCL, after which CCL gave additional details on how CCL would meet this requirement and stated that its proposal took precedence over the IFB schedule contract. DCC has presented no further facts showing that the contracting officer's determination that CCL could meet the response time requirements was unreasonable. Contrary to DCC's view, there is no duty for the contracting officer to receive assurances from IBM that CCL would meet contract requirements. Finally, DCC's claim that CCL/IBM are not meeting response time requirements under the contract concerns contract administration; this is not subject to our bid protest authority. 4 C.F.R. § 21.3(m)(1) (1988).

In its request for reconsideration, DCC has made a number of other references to allegedly poor contract performance that also will not be considered by our Office as they concern contract administration.

Accordingly, the request for reconsideration is denied.

James F. Hinchman
General Counsel