



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Horizon Trading Company, Inc.--Request for
Reconsideration
File: B-231177.3
Date: November 21, 1988

DIGEST

1. Request for reconsideration is denied where the protester merely reiterates arguments initially raised and previously considered by the General Accounting Office.
2. Where protester neither alleges nor makes a prima facie showing that contracting agency awarded a contract intending to modify it, alleged modification of the contract after award is a matter of contract administration, and the General Accounting Office will not review the matter pursuant to its bid protest function.

DECISION

Horizon Trading Company, Inc. requests reconsideration of our decision, Horizon Trading Company, Inc; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86. In that decision, we denied in part and dismissed in part Horizon's protest of the contract award for furniture and household furnishings to Chicago Pacific Company by the Department of State (DOS) pursuant to request for proposals (RFP) No. 0000-620044.

We deny the request for reconsideration and dismiss an additional protest ground that Horizon now raises concerning an allegedly improper post-award modification by DOS of Chicago Pacific's contract.

The RFP contemplated a fixed-price indefinite quantity requirements contract for a period of 1 year, with four 1-year options. All offerors were required to provide furniture and furnishings from their regular commercial lines and to meet detail specifications concerning construction, materials, and size of the items to be included in each packaged home. Under the RFP's evaluation scheme, proposals were to be evaluated in three technical areas: packaged home aesthetics, furniture suitability, and program administration plans. These three factors were to

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receive equal weight in technical scoring. The RFP provided that technical capabilities would be weighted 1-1/2 times (60 percent/40 percent) as heavily as cost in evaluation scoring of proposals. After completion of the technical evaluation, a price evaluation factor was added to the offeror's technical evaluation score to determine a total evaluation score. In accordance with the RFP evaluation scheme, the Pennsylvania House Division of Chicago Pacific received the highest total score and was awarded the contract on April 20, 1988.

Horizon, in its protest, argued that its failure to obtain the contract award was due to an improper evaluation of its technical proposal. Specifically, Horizon protested the evaluation of its proposal in the two technical areas of "Furniture Suitability" and "Program Administration Plan," and the alleged downgrading of its proposal for lack of demonstrated "high volume" experience. With respect to the evaluation of the furniture suitability factor, Horizon argued that its proposal was evaluated on only four of the eight specified criteria. Horizon contended that either the other evaluation criteria were overlooked completely or that the four criteria were given greater weight in an improper manner. With respect to the program administration plan, Horizon argued that an unreasonable emphasis in the evaluation was given by DOS to its proposed approach to administration of the program relating to consolidation, packing and liaison.

We concluded from our review of the evaluation documents that the protester's proposal did receive the proper consideration for all criteria under the major evaluation factors, furniture suitability and program administration plan. We further concluded that under the terms of the RFP, it was proper for DOS to take into consideration high volume experience, although it was not a listed evaluation criterion.

In its request for reconsideration, Horizon argues that we failed to discuss and consider its allegation that the contracting agency lacked a reasonable justification for the technical evaluation of its alternate proposal. In our original decision, we took note that Horizon submitted an alternate proposal which was considered acceptable, but we did not consider it in our decision because of its lower technical rating. Horizon contends that our "summary dismissal" of this protest issue is unwarranted and that we should have considered the propriety of the evaluation of its alternate proposal which was "slightly lower" in price than its prime proposal.

In our prior decision, we reviewed the evaluation documents and concluded that Horizon's prime proposal was evaluated in accordance with the stated evaluation criteria. Since the protester in its comments to the conference and agency report stated that its prime and alternate proposals were identical in all respects except for a portion of the furniture line items in one grouping, it was not necessary for us to separately discuss the evaluation of Horizon's alternate proposal. For example, as stated above, Horizon, in its initial protest, argued that only four of eight specified criteria under the furniture suitability factor were considered by the agency or that these four criteria were given greater weight in an improper manner. In our decision, we found that DOS gave proper consideration to all factors during its evaluation and did not overlook or ignore any criteria. We think this finding equally applies to Horizon's alternate proposal.

As another example, with respect to the program administration plan evaluation factor, Horizon argued that DOS gave unreasonable emphasis during evaluation to its proposed approach to administration of the program concerning consolidation, packing and liaison. We again found that the evaluation documents established that all factors and subfactors were properly taken into consideration by DOS in its evaluation. We think that this finding also applies equally to Horizon's essentially identical alternate proposal. In short, we do not think that the slight difference between the prime and alternate proposals affected our review of the propriety of the agency's evaluation since the major issues raised encompassed both proposals. We therefore will not separately discuss the propriety of the evaluation of Horizon's alternate proposal.^{1/}

Next, Horizon again argues that certain technical evaluation criteria were given greater weight by DOS than others, in a manner inconsistent with the stated evaluation criteria, and that our Office failed to address this issue.

Contrary to Horizon's assertions, in our decision, with respect to both protested areas, "Furniture Suitability" and "Program Administration Plan," we addressed this issue and found that all criteria under the major evaluation factors

^{1/} We also note that Horizon's prime proposal received higher evaluation scores than did its alternate proposal so that Horizon's direct economic interests reflected in its protest were principally based in its prime proposal which had a greater chance for award than the alternate proposal.

were taken into consideration and were in fact given the proper weight. In this regard, we again note that the evaluation of "package homes" on the basis of "aesthetics" and "suitability" by its nature is an extremely subjective exercise and the mere fact that Horizon disagrees with DOS' judgment does not invalidate it. See Centurion Films, Inc., B-205570, Mar. 25, 1982, 82-1 CPD ¶ 285.

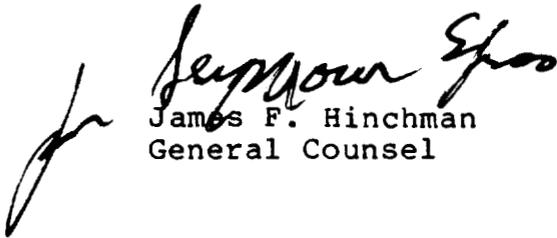
Horizon also repeats its arguments concerning our dismissal of the issues it raised relating to the awardee's alleged failure to comply with mandatory specifications in the awarded contract. For example, Horizon alleged in its initial protest that Chicago Pacific had proposed a line of furniture with certain pieces produced with printed materials, instead of wood, contrary to the terms of the RFP. In our prior decision, we found this protest ground to concern a matter of contract administration since Chicago Pacific had not taken exception to any mandatory requirement in its proposal, and we also stated that the pieces of furniture in question were inconsequential and did not affect the evaluation results. Horizon now essentially reiterates arguments it previously made in pursuing the protest, and expresses disagreement with our decision. Such reiteration and disagreement, however, do not establish that our decision was legally or factually wrong and therefore should be reversed. See 4 C.F.R. § 21.12(a) (1988); Roy F. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364.

Horizon also asserts, for the first time, that after award Chicago Pacific, with the approval of DOS, has made substantial changes to certain items being furnished which would have affected the evaluation. Horizon contends that these changes are evident in the DOS' official catalog and price list for Chicago Pacific's contract. For example, according to Horizon, "Weiman Model 7000-26 solid brass accessory table is listed in the contract [while the] catalog now shows an unknown brand Model 8046-275 as a substitute." Also, the Pennsylvania House Model 27-1302 desk has allegedly been changed to a Model 27-1034 desk.

We first note that the changes may simply reflect model number changes, without any substantive significance. However, even if the changes are significant, in the absence of evidence that a contract was awarded with intent to modify it, we will not question an alleged contract modification unless it is shown to be beyond the scope of the original contract, so as to require a separate procurement. See, e.g., Shamrock Industries, Inc.; Southern Plastics Engineering Corp.--Reconsideration, B-225246.2, B-225246.3, Mar. 18, 1987, 87-1 CPD ¶ 302. Horizon does not

allege nor establish that DOS awarded the contract with the intent to modify it or that the alleged modifications are beyond the scope of the original contract. Accordingly, we find this matter to be also a matter of contract administration outside our Office's bid protest function.

Since the protester, in its request for reconsideration, essentially expresses disagreement with our decision and merely reiterates previous arguments, we do not think the firm has established a basis for reconsideration. See 4 C.F.R. § 21.12(a). Accordingly, we deny the request for reconsideration and we dismiss the additional protest ground.



James F. Hinchman
General Counsel