



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sal Esparza, Inc.--Request for Reconsideration
File: B-231097.2
Date: December 27, 1988

DIGEST

Request for reconsideration that reiterates previously considered arguments does not provide a basis for reconsideration of our original decision.

DECISION

Sal Esparza, Inc. (SEI), requests reconsideration of our decision in Sal Esparza, Inc., B-231097, Aug. 22, 1988, 88-2 CPD ¶ 168, in which we denied the firm's protest of contract award to American National Management Corporation (ANMC) under request for proposals (RFP) No. F41685-88-R-0002, issued by Laughlin Air Force Base, Texas for grounds maintenance services.

We deny the request for reconsideration.

The RFP, as amended, requested a proposal for grounds and golf club maintenance and an alternate proposal for grounds maintenance services only. The RFP stated that the technical evaluation was substantially more important than price and that the government reserved the right to award the contract to other than the lowest priced offeror or to other than the technically superior offeror. The RFP advised offerors that an unrealistically low price might be grounds for eliminating a proposal from consideration either because the offeror did not understand the requirements of the solicitation or because the offer was improvident.

SEI had protested to our Office that contract award should have been based on price; that award to a higher priced offeror was improper because SEI's proposal was unfairly evaluated; and that the agency was biased in favor of ANMC.

We denied the protest because in a negotiated procurement, the contracting agency is not required to make award to the

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firm offering the lowest price when, as here, the RFP specifies that technical considerations are substantially more important than price. Additionally, given the deficiencies in the protester's technical proposal, and our conclusion that the agency's technical evaluation was reasonable, we determined that the cost/technical tradeoff that was made in this case was rational. Further, we found no evidence of bias against SEI in the record and concluded that the protester failed to meet its burden of proof.

SEI, in its reconsideration request, contends that our Office failed to address all the issues that were raised by its firm, specifically, whether, under the RFP, price was the most important factor in the evaluation of proposals; whether the agency properly evaluated proposals and held meaningful discussions; whether SEI was prejudiced by the agency's failure to provide timely advice on the elimination of golf course maintenance as a requirement; and whether SEI reasonably perceived alleged inconsistencies in the RFP only after contract award to ANMC. Additionally, SEI again asserts that the agency unfairly withheld from SEI documents which were provided to and were considered by our Office in deciding the protest.

A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of our prior decision is deemed warranted and must specify any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. American Maintenance Co.--Request for Reconsideration, B-228396.5, June 7, 1988, 88-1 CPD ¶ 534.

Based on a review of the record and the reconsideration request, we conclude that SEI is merely repeating contentions that were raised and considered in the initial protest. With respect to price, we stated in our prior decision that amendment No. 1 to the RFP eliminated the provision which stated that award would be made to the offeror whose price was most advantageous to the government; that the cost differential was not ignored and that the cost/technical tradeoff made was rational. Therefore, there is no basis for SEI's repeated contention that price became a key factor once best and final offers (BAFOs) were requested. The contention relating to alleged ambiguities in the solicitation and amendments was untimely and not for consideration because it was raised in the protester's comments on the agency report rather than prior to the

closing date for receipt of proposals as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

With regard to the elimination of the requirement for golf course maintenance, the protester was on notice of that possibility because amendment No. 1, issued on January 13, 1988, requested an alternate proposal covering only grounds maintenance in light of the possibility that golf course maintenance would become a nonappropriated fund activity. Thus, there was no basis for SEI's assertion that its firm was prejudiced by the agency's failure to issue a timely amendment after the golf course maintenance requirement was actually eliminated. Regarding discussions, our decision pointed out that SEI was advised of the deficiencies in its initial proposal, but the firm failed to correct those deficiencies in its BAFO. There was nothing in the record supporting SEI's suggestion that meaningful discussions were not held because its proposal was unfairly scored on the basis of technical concerns that were not revealed to its firm during discussions. Since SEI's arguments essentially were considered in our prior decision, they do not provide a basis for reconsideration. Vacco Industries--Reconsideration, B-230036.2, June 30, 1988, 88-1 CPD ¶ 617.

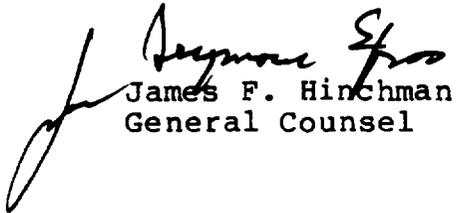
With respect to SEI's document request, the record indicates that the Air Force withheld from the firm only those documents which were not subject to release. 31 U.S.C. § 3553(f)(1988).

SEI also complains that our decision deals with issues not raised by the parties. Specifically, SEI complains that there was no issue concerning whether its price was unreasonably low, whether it understood the requirements of the solicitation, whether its offer was improvident, how price realism affects an offeror's understanding of the contract requirements, and whether there was bias in favor of the awardee.

First, we point out that a majority of these were a recitation of the factors contained in amendment No.3 to the solicitation dealing with price, cost/technical evaluation and award. These are factors that relate to SEI's assertion that price alone became the determinative factor for award once BAFOs were requested. We fail to see how they can be ignored once the issue of an award to a higher priced offeror was raised in conjunction with the technical evaluation. We also note that while we concluded that the awardee's price proposal may have been more realistic than SEI's (based on a number of factors set out in the decision), we did not find SEI's offer to have been improvident.

Moreover, it is, in our opinion, disingenuous for SEI to assert that bias in favor of the awardee was not an issue, particularly where it complained of potential bias in its protest and where, while disavowing concern for the alleged bias on its part, it devoted a portion of its comments to the subject.

The request for reconsideration is denied.



James F. Hinchman
General Counsel