



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: FAA Seattle Venture, Ltd.--Request for
Reconsideration

File: B-234998.4

Date: October 12, 1989

DIGEST

1. Under the General Accounting Office Bid Protest Regulations, 4 C.F.R. § 21.12(a), a party requesting reconsideration must show that our prior decision contains either error of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard.

2. Request for reconsideration is denied when based on arguments that could have been, but were not, raised by the protester in the course of the original protest.

DECISION

FAA Seattle Venture, Ltd. (FAASVL), requests reconsideration of our decision in FAA Seattle Venture, Ltd., B-234998.2, Aug. 9, 1989, 89-2 CPD ¶ , in which we denied FAASVL's protest of the rejection of its offer and award of a contract to the Austin company under solicitation for offers (SFO) No. MWA-70343, issued by the General Services Administration (GSA) for the lease of office, light industrial, and warehouse space to house the Federal Aviation Administration region 10 office. We denied FAASVL's protest because FAASVL had failed to submit evidence of site ownership or control with its offer and, therefore, the rejection of FAASVL's offer was proper.

We deny the request for reconsideration.

In its initial protest FAASVL contended that it had legally enforceable control of the site, that other agencies have stated they would have been satisfied with the form of

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evidence FAASVL submitted and that if further documentation were required it should have been requested. FAASVL asserted that GSA did not request additional site control documentation; rather, FAASVL stated that GSA indicated on the telephone that the information supplied was sufficient. Further, FAASVL stated that its best and final offer (BAFO) request letter from GSA did not indicate that FAASVL had not provided sufficient evidence of site control and this deficiency could have been remedied had GSA alerted it to the problem. Finally, FAASVL contended that since its offer would have saved the government \$19 million over the 20-year term of the lease, compared to Austin's offer, it should have received the award.

In our prior decision, we found that FAASVL originally submitted to GSA as evidence of site control a document entitled "Agreement to Convey Real Property." This "agreement" stated that the undersigned seller had received a deposit from the protester for the purpose of purchasing certain parcels of land at Orillia Industrial Park. However, the seller was not identified and the seller's signature did not appear on the purported agreement. Therefore, the document, in fact, did not represent an agreement between the two necessary parties, the seller and the buyer, but merely represented a unilateral indication that the protester was interested in purchasing the parcels. Nowhere was any agreement actually made to sell any property. GSA, therefore, could not have accepted this document as evidence of site control, as required by the RFP, and could not accept FAASVL's offer of those sites. See W.D.C. Realty Corp., B-225468, Mar. 4, 1987, 87-1 CPD ¶ 248.

With respect to its BAFO, FAASVL offered three alternative sites, but again produced the same type of document as evidence of site control for two of the sites as it produced in its initial offer. With respect to the third site, certain parcels of land at Orillia Industrial Park, FAASVL produced a letter from the senior director of the corporate owner stating that if FAASVL were awarded the lease by GSA, the owner would enter into negotiations regarding a sale subject to continued availability of the land and corporate approval. The letter also noted that other developers had also indicated their intent to submit sites at Orillia to GSA.

We found that although the letter expresses an interest by the owner in selling certain parcels of land, it was conditioned on the possibility of prior sale of the land and the successful outcome of contract negotiations. In fact, FAASVL acknowledges that this letter failed to provide the

requisite evidence of site control by stating that the company selling the Orillia sites "was extremely hard to deal with; they would not accept our offer of an option to purchase the land--they knew there were several competitors for this project and did not wish to commit themselves in any way to a particular offeror."

We concluded that FAASVL did not produce evidence of the requisite site control called for in the solicitation. W.D.C. Realty Corp, B-225468, supra. FAASVL submitted, therefore, an unacceptable BAFO since GSA could not have accepted it without further modification, i.e., satisfactory evidence of site control.

In its request for reconsideration FAASVL states that it does not contend that it had legally enforceable control of the site but rather it asserts that it submitted a preponderance of evidence showing that legally enforceable control was available because there was a willing seller and a great quantity of land was available.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either error of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1989). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Sletager, Inc.--Request for Reconsideration, B-233350.2, Apr. 18, 1989, 89-1 CPD ¶ 382.

FAASVL is merely repeating some of the arguments it made as to whether or not it had the requisite site control to satisfy the solicitation's requirements. As stated in the prior decision, an agreement to negotiate a contract to sell land subject to later agreement on price and the prior sale of land is insufficient to show ownership or site control. What FAASVL appears to be arguing is that it showed that the general availability of land was not a problem and that it could negotiate a contract with some seller for some piece of land in the future. This is quite different, however, from showing that FAASVL had actual control or ownership of land upon which GSA could rely that the building it sought would be built or become available.

FAASVL's second basis for requesting reconsideration is the contention that the contracting officer's statement that on two occasions he advised FAASVL of the importance of site control is false. In our prior decision, we discussed the dispute between FAASVL and GSA as to whether any oral discussions were held regarding the need to provide adequate

evidence of site control. FAASVL pointed to the fact that GSA's BAFO request letter made no mention of the site control issue. GSA contended that FAASVL was advised of the importance of site control evidence by the contracting officer on two occasions. First, when the contracting officer met with FAASVL's president prior to receipt of initial proposals and, secondly, when the contracting officer advised FAASVL's president over the telephone that the unilateral document submitted in its initial proposal did not demonstrate it controlled the site and that its offer was not acceptable for that reason.

Accordingly, the parties contentions were in direct conflict as to whether oral discussions on the need for evidence of site control ever occurred. We found that while FAASVL contended it was not aware of the deficiency in its proposal, in its BAFO it submitted new sites with additional documents purporting to show site control. Therefore, we found that the preponderance of the evidence supported the view that FAASVL was aware of the deficiency and took what steps it could to correct it. Coastal Elecs., Inc., B-227880.4, Feb. 8, 1988, 88-1 CPD ¶ 120.

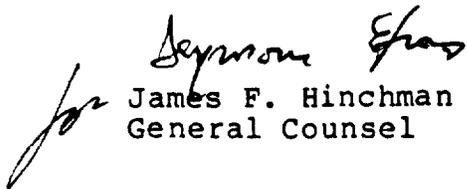
Again, FAASVL is merely repeating arguments, made in its original protest which we considered in reaching our previous decision. FAASVL's disagreement with our decision does not serve as a basis for us to reconsider the decision. Sletager, Inc.--Request for Reconsideration, B-233350.2, supra.

Finally, FAASVL contends that it has information not previously considered that warrants reversal or modification of our decision. FAASVL states that after receipt of our decision, FAASVL contacted three other offerors who were also not sent a request for the second round of BAFOs and they stated that they were not alerted to deficiencies in their proposals prior to their submissions in response to the first BAFO request. FAASVL states that this new evidence supports its claim that it also was not alerted to the deficiency in its offer.

Our Regulations do not permit a piecemeal presentation of evidence, information, or analyses, and where a party raises in its reconsideration request an argument that it could have, but did not, raise at the time of the protest, the argument does not provide a basis for reconsideration. Marine Industries, Ltd.--Reconsideration, B-225722.2, June 24, 1987, 87-1 CPD ¶ 627. FAASVL states that on May 10, 1989, shortly after it filed its comments to the

agency report, it received a list of offerors who participated in this procurement. However, FAASVL awaited our decision, issued August 9, before it made any effort to contact the offerors as to whether GSA held discussions with them. FAASVL, therefore, improperly delayed its filing of this additional argument as it should or could have known of the basis for the argument shortly after May 10, when it knew the identity of the other offerors. FAASVL's attempt to raise this matter months after it could have discovered the basis for its argument does not provide a basis for reconsideration. Id. See, also, Sun Enters., B-221483.2, Apr. 18, 1986, 86-1 CPD ¶ 384.

We deny the request for reconsideration.

for
James F. Hinchman
General Counsel