

Jannelli



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Motorola, Inc.--Request for Reconsideration
File: B-234773.2
Date: December 7, 1989

DIGEST

1. Request for reconsideration that does not show errors of fact or law in the prior decision and which essentially restates arguments that were previously made and considered in the original bid protest provides no basis for reconsideration.
2. New and independent grounds of protest first raised in protester's comments on the agency's report responding to initial protest allegations were properly dismissed as untimely, where the later-raised issues were filed more than 10 working days after protester was aware of the new grounds of protest.

DECISION

Motorola, Inc., requests reconsideration of our decision Motorola, Inc., B-234773, July 12, 1989, 89-2 CPD ¶ 39, denying in part and dismissing in part the protest Motorola filed against the Army's award of a contract to Automated Data Management, Inc. (ADM), for preventive maintenance and repair of radio communications equipment pursuant to request for proposals (RFP) No. DAJB03-88-R-3924.

We deny the request for reconsideration.

In its initial protest, Motorola alleged that ADM did not satisfy certain definitive responsibility criteria contained in the RFP and that the Army had made a bad faith determination that ADM was responsible. Motorola also alleged that the Army had improperly accepted ADM's initial proposal even though the proposal was submitted to the Army after the time set forth in the RFP for receipt of initial proposals. Motorola further contended that ADM was not fulfilling its performance requirements under the contract.

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In our July 12 decision, we examined the five requirements--characterized as definitive responsibility criteria by Motorola--that ADM allegedly did not meet. We determined that the requirement for information pertaining to offerors' equipment maintenance experience and the requirement for a mobilization plan and adequate test equipment were not definitive responsibility criteria. With respect to these two requirements, we held that the contracting agency had properly evaluated ADM's proposal in accord with the RFP's stated evaluation criteria. We determined that the other three requirements, relating to employee training certificates and experience, were definitive responsibility criteria, and we held that the contracting officer reasonably concluded that ADM either specifically complied with the requirement or evidenced a level of achievement equivalent to the criterion. We found no evidence that the contracting officer acted in bad faith in finding ADM to be responsible.

Regarding Motorola's charge that the Army had accepted ADM's initial proposal even though it was submitted after the time set for receipt of initial proposals, we stated that the evidence showed that the initial proposal was in fact received on time. Concerning Motorola's claim that ADM was not fulfilling its obligations under the contract, we stated that was a matter of contract administration which would not be considered by our Office.

In its request for reconsideration, Motorola argues that our previous decision contains a multitude of errors of fact and law that warrant reconsideration. For example, Motorola contends that our Office misstated the evaluation basis by "suggest[ing] that the solicitation adequately advised offerors that the award would be determined on the basis of lowest cost at the expense of technical competence." Our decision actually stated that the RFP "provided that award would be made to the lowest priced offeror which submitted a technically acceptable offer." In fact, the RFP provided:

"Award will be made to the responsive, responsible offeror submitting the lowest offer which meets all terms and conditions set forth in this solicitation."

Contrary to Motorola's assertion, we believe that our prior decision accurately interpreted the basis for award as set forth in the RFP.

While we will not discuss the numerous remaining contentions raised in the request for reconsideration, we have examined all of the arguments and find no errors in our prior

decision. Even though Motorola has reformulated some of the arguments it made in the original protest, essentially Motorola has restated arguments already made and considered by our Office in resolving the original protest. Therefore, the request for reconsideration provides no basis for us to reconsider our prior decision. See Recon Optical, Inc.-- Request for Reconsideration, B-232125.2, Feb. 24, 1989, 89-1 CPD ¶ 201.

Motorola also contends that we erroneously dismissed as untimely several of the issues it raised in its comments on the Army's report on its original protest. The issues we dismissed related to Motorola's contentions that ADM should not have been included in the competitive range and that the Army engaged in technical leveling. After reviewing the protest record in view of the arguments made in the request for reconsideration, we conclude that these issues were correctly dismissed in our prior decision.

In its initial protest letter, Motorola alleged only that ADM was not responsible, that the Army had improperly accepted ADM's initial proposal even though it was late, and that ADM was not fulfilling its performance obligations under the contract. The Army filed its report responding to these allegations on April 14, 1989. On April 21, Motorola stated that it had reviewed the Army's report and requested release of certain documents cited in that report.

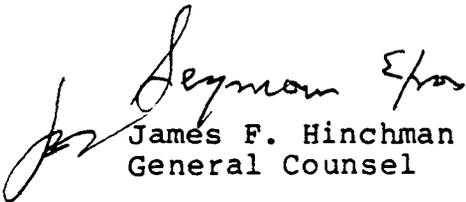
On April 26, the Army provided Motorola with unedited versions of the contracting officer's statement and a memorandum concerning the determination of ADM's responsibility as requested by the protester. At Motorola's request, we held an informal conference on the protest on May 2, and Motorola filed comments on both the report and the conference on May 11. In its letter commenting on the report and the informal conference, Motorola raised for the first time allegations concerning the competitive range determination and technical leveling.

We held that the allegations regarding the competitive range determination and technical leveling were untimely, because they were known to Motorola, at the latest, upon receipt of the Army's report, but were first raised more than 10 days thereafter. See 4 C.F.R. § 21.2(a)(2) (1989). In its request for reconsideration, Motorola admits that the allegations raised in its May 11 comments were "directly related to and prompted by the material released by the [Army] on April 26, 1989." However, Motorola argues that we should have considered these later-raised issues because they were included in Motorola's comments which were filed within the 7-day period allowed for comments on an informal

conference in accord with our Bid Protest Regulations. See
4 C.F.R. § 21.5(a)(2).

The issues Motorola raised in its comments on the report/conference are new and independent grounds for protest, and, therefore, they independently had to satisfy the timeliness requirements of our Bid Protest Regulations. See P-B Engineering Co., B-229739, Jan. 25, 1988, 88-1 CPD ¶ 71. Motorola was required to file these protest issues in our Office within 10 working days of when Motorola first became aware of the new protest grounds. 4 C.F.R. § 21.2(a)(2). Since Motorola acknowledges that these issues were drawn from the documents received by it on April 26, Motorola was required to file these new protest bases within 10 days of April 26. Instead, Motorola waited until the 11th working day, or May 11, to file these issues, and we properly found that the new bases for protest were untimely filed. The fact that Motorola included the new grounds in its comments letter which was filed within the 7-day comment period does not make the filing of the new and independent grounds for protest timely. See Towson Industrial Maintenance Corp., B-199349, Oct. 7, 1980, 80-2 CPD ¶ 248.

The request for reconsideration is denied.


James F. Hinchman
General Counsel