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**Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Scientific Systems Company--Reconsideration

**File:** B-236961.6

**Date:** August 15, 1990

Raman K. Mehra, for the protester.  
Leon J. Glazerman, Esq., Widett, Slater & Goldman, P.C., for  
System Resources Corporation, an interested party.  
Gregory H. Petkoff, Esq., Office of the General Counsel,  
Department of the Air Force, for the agency.  
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

**DIGEST**

Pass/Fail sample problem on a negotiated procurement, which provided technical evaluators with a measure of the offeror's ability to independently size up a problem and propose a viable, efficient solution, is not rendered an invalid evaluation tool by the fact that the incumbent contractors did not receive the highest scores on the problem.

**DECISION**

Scientific Systems Company requests reconsideration of our decision, Modern Technologies Corp.; Scientific Sys. Co., B-236961.4; B-236961.5, Mar. 19, 1990, 90-1 CPD ¶ 301, which denied its protest of several awards under request for proposals (RFP) No. F19628-88-R-0059. The RFP was issued by the Air Force Electronic Systems Division (ESD) for technical and engineering management support (TEMS) services to ESD for development and acquisition of command, control, communications, and intelligence systems.

We deny the request for reconsideration.

The Air Force included a sample problem in the RFP to provide a measure of an offeror's ability to independently size up a problem and propose a viable, efficient solution. The problem included several tasks which were representative of the type of work that could be assigned under the contract. Responses to the tasks were point scored. The

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record showed that there was some uncertainty on the part of the evaluators as to how to decide whether offerors passed the sample problem. Consequently, the evaluators computed a mean point score and determined those offerors with point scores above this mean figure passed and those below that figure failed.

We found questionable the Air Force's use of the arithmetic mean of the actual scores received on the sample problem as a pass/fail criterion, noting that one offeror with 66 points passed and another with 64 points failed, even though there appeared to have been no substantial difference in quality between the sample problem responses. However, we found no prejudice to the protester in the Air Force's scoring of the sample problem, since its score on the sample problem was the lowest of all those given to the 14 offerors in the competitive range and since there was no indication that its responses to the sample problem were miscalculated.

In its reconsideration request, Scientific asserts, as it did in its initial protest, that the Air Force established a minimum score of 100 points to pass the sample problem, and that no offeror received this score. According to Scientific, the fact that incumbents with up to 6 years of TEMS experience scored below 90, and the two highest scores were achieved by offerors with no TEMS experience, indicates that the sample problem did not measure what the designers of the problem purported it to measure. Therefore, Scientific argues, the sample problem should not have been used as a factor in the source selection. Scientific attaches a letter from a testing specialist challenging the validity of the sample problem. The specialist argues that "there was a mismatch between the criteria used to evaluate the sample task and what in fact was asked for in the sample task giving rise to ambiguity and introducing error in measurement."

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains errors of fact or law or present information not previously considered that warrants its reversal or modification. See 4 C.F.R. § 21.12(a) (1990); Transportation Research Corp.--Recon., B-231914.2, Nov. 10, 1988, 88-2 CPD ¶ 468. Repetition of arguments made during the resolution of the original protest or mere disagreement with our decision does not meet this standard. Id.

Scientific's assertion that the Air Force established a minimum score of 100 points to pass the sample problem is just a restatement of its original protest contention that all offerors in effect failed the sample problem because all scored below 100 points. We addressed this argument in our decision, stating that the record indicated that no pass/fail line was established prior to receipt of offers, and that 100 points was never approved or applied as a pass/fail line.

We also do not agree that the relatively low scores received by some incumbents on the sample problem indicate the problem is not a valid evaluation tool. Although it is not unusual for an incumbent contractor to enjoy an advantage in competing for a government contract by reason of its incumbency, it still must demonstrate whatever capabilities it may have accrued from its incumbency in its written proposal, since there is no legal basis for favoring a firm with presumptions on the basis of past performance. See Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288. Indeed, a sample problem where only incumbents could receive maximum scores would be of questionable validity.

In the present case, all incumbents, as well as several non-incumbents, did pass the test. Although it is true some non-incumbents received higher scores than incumbents, this in no way undercuts the evaluation of the sample problem responses. Indeed, our review indicated that the Air Force prepared a detailed evaluation of offerors' proposed solutions to the sample problem against predetermined evaluation standards, and the evaluation of the sample task responses appeared reasonable and consistent with the RFP.

Scientific's contention regarding a mismatch between the criteria used to evaluate the sample problem and the content of the sample problem is only supported by the testing specialist's conclusionary statement that there was such a mismatch. In any case, we found in our prior decision that the evaluation of the sample problem was in accordance with the RFP evaluation criteria. If Scientific's contention actually concerns the validity of the RFP criteria, this contention is untimely under our Bid Protest Regulations and will not be considered, since it involves an alleged apparent solicitation defect and was not filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

Scientific also requests reconsideration on the basis that the Air Force does not have in its files a copy of Scientific's December 4, 1989, comments on the Air Force agency reports filed during resolution of the protest.

Scientific argues that the "lost" comments contained information vitally important to its protest, and that its request for reconsideration therefore meets the standard in our regulations that a request for reconsideration be based on "information not previously considered."

Information not previously considered refers to information which was overlooked by our Office or information to which the protester did not have access when the initial protest was pending. Sunset Realty Sales Assocs.--Request for Recon., B-221390.2, May 27, 1986, 86-1 CPD ¶ 488. Scientific does not present any new facts which were not previously considered by our Office. We reviewed the December 4 letter from Scientific, which highlighted the major areas of Scientific's protest, and addressed those areas in our decision.

We deny the request for reconsideration.

  
for James F. Hinchman  
General Counsel