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White



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tony Western--Reconsideration

File: B-241169.3

Date: May 21, 1991

Tony Western and Catherine S. Sands, Esq., for the protester. Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's assertion that agency allowed insufficient time for preparation of proposals is untimely when first raised after contract award, and does not fall within the significant issue exception to the General Accounting Office timeliness requirements.
2. Request for reconsideration is denied where protester fails to show error of fact or law or information not previously considered that would warrant reversal or modification of prior decision, and makes arguments that could have been, but were not, raised in the course of the initial protest.

DECISION

Tony Western requests reconsideration of our decision, MGM Land Co.; Tony Western, B-241169; B-241169.2, Jan. 17, 1991, 91-1 CPD ¶ 50, in which we denied his protest challenging the exclusion of his proposal from the competitive range under request for proposals (RFP) No. 8000-90-23, issued by the National Park Service (NPS), Department of the Interior, for the eradication of feral pigs from Santa Rosa Island in Channel Islands National Park, California. Mr. Western argues that our prior decision erred in concluding, among other things, that the evaluation panel used by NPS to review proposals was competent, and that the evaluation of his proposal was reasonable.

We deny the request for reconsideration.

The RFP sought professional hunters to eradicate the feral pig population on Santa Rosa Island in Channel Islands National Park, and advised that award would be made to the offeror

whose proposal was most advantageous to the government. After evaluating proposals from 13 offerors, NPS established a competitive range consisting of the 5 offerors with the highest-rated proposals. Our prior decision concluded that the evaluation of Mr. Western's proposal was reasonable, and that he was reasonably excluded from the competitive range. Our review also included a discussion of the protester's contentions regarding the qualifications of the agency's evaluation panel, whether the panel was biased, and whether the awardee was given an unfair advantage compared to the other offerors. The protester's contentions in each of these areas were denied.

In his request for reconsideration, Mr. Western raises four major arguments: (1) that his assertion that NPS allowed insufficient time for preparation of proposals should not have been viewed as untimely, or in the alternative should be treated as a significant issue and considered regardless of when raised; (2) that the evaluation panel was incompetent; (3) that the evaluation of his proposal was unreasonable; and (4) that the awardee had an unfair advantage over other offerors. Mr. Western offers new arguments in support of his contentions that the evaluation panel was incompetent and that the awardee enjoyed an unfair advantage; his challenges to the evaluation of his proposal and the time for proposal preparation are the same as in his initial protest.

As an initial matter, Mr. Western has failed to show any error in our decision to dismiss as untimely his challenge to the sufficiency of time permitted for preparation of proposals. As explained in our previous decision, such challenges must be raised prior to the initial closing date for submission of proposals. 4 C.F.R. § 21.2(a)(1) (1991). Further, we disagree with Mr. Western's contention that his protest raises significant issues in this regard that must be addressed, even if raised in an untimely manner. Although we may invoke the significant issue exception to our timeliness rules when, in our judgment, the circumstances of the case are such that our consideration of the protest would be in the interest of the procurement system, we will strictly construe and seldom use the significant issue exception, limiting it to protests that raise issues of widespread interest to the procurement community. DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. ____, 90-2 CPD ¶ 310. The resolution of issues that only relate to the requirements and evaluation procedures of a single solicitation generally do not fall within the exception. See NFI Mgmt. Co., 69 Comp. Gen. 515 (1990), 90-1 CPD ¶ 548. Mr. Western's belief that more time should have been allowed for preparation of proposals--even though NPS gave offerors 30 days to respond to the RFP as required by Federal Acquisition Regulation § 5.203(b)--does

not present an issue appropriate for resolution under the significant issue exception to our timeliness rules.

Likewise, Mr. Western fails to show that our prior decision incorrectly concluded that the agency's evaluation of his proposal was reasonable; rather, he reiterates the arguments made in his initial protest. Specifically, Mr. Western argues that his failure to identify key personnel, or to provide detailed information regarding the types of traps to be used, did not require a major revision of his proposal. Mr. Western also argues that the evaluators did not give sufficient credit to his proposal for, among other things, his choice of helicopter, and his use of night vision electronic tracking equipment and drug-induced estrus.

As mentioned above, each of these arguments was raised by the protester during our initial consideration of his protest. Under our Bid Protest Regulations, a party requesting reconsideration must show that the protester has information not previously considered that warrants reversal or modification of our decision. See 4 C.F.R. § 21.12(a). The mere repetition of arguments made during the initial protest, or disagreement with our decision, does not meet this standard. Logics, Inc.--Recon., B-237411.2, Apr. 25, 1990, 90-1 CPD ¶ 420.

With respect to the qualifications of the NPS evaluation panel, Mr. Western raises several new challenges, including allegations that the members of the evaluation panel are only experienced in the area of controlling feral rodents, not pigs, and that NPS' apparent failure to make its own aerial survey of Santa Rosa Island in preparing an estimate of the number of pigs is evidence of the inexperience of the panel.^{1/} We will not consider arguments that could have and should have been raised in the prior protest. AUTOFLEX, Inc.--Recon., B-240012.2, Nov. 7, 1990, 90-2 CPD ¶ 370. Mr. Western's failure to make all his available arguments at the time of the original protest results in a piecemeal presentation of issues that could disrupt the procurement process indefinitely; accordingly, where a party raises in its reconsideration request an argument that it could have raised, but did not, at the time of the protest, the argument does not provide a basis for reconsideration. Id.

^{1/} For the record, we see no logical connection between the agency's decision not to perform an aerial survey of the number of pigs on Santa Rosa Island and the qualifications of the evaluation panel.

Mr. Western also claims new facts exist regarding the issue of whether the awardee had an unfair advantage over the other offerors. In this regard, Mr. Western explains that he recently chartered an airplane and conducted his own aerial survey of Santa Rosa Island, and, as a result of his survey, he questions the accuracy of the government's estimate of the number of feral pigs on the island. Mr. Western says that during this survey of the island he was able to count fewer than 50 pigs, in dramatic contrast to the estimate found in the RFP. Specifically, the RFP stated:

"In 1986, the [NPS] estimated the pig population at 4,000. The current drought has reduced numbers greatly; it appears that fewer than 2,000 pigs are currently on the island. This situation could change quickly if rainfall increases substantially."

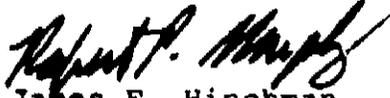
According to Mr. Western, since the awardee alone had access to the island,^{2/} the awardee had an unfair advantage over other offerors because he was in a unique position to know whether the government's estimate of the pig population was significantly overstated.

Again, Mr. Western raises issues that he could have raised in the initial protest; in fact, his own arguments demonstrate that he should have questioned the government's estimate prior to submitting his proposal. According to Mr. Western, during a pre-proposal meeting with offerors, an NPS biologist commented that ". . . the pigs that had been shot had a half inch of fat on their rumps." Mr. Western argues that the existence of such "extremely fat pigs" raised doubt that the island could support a population of 2,000 (well-fed) pigs given the severe ongoing drought. Mr. Western's argument, on its face, concedes that he had reason to question the NPS estimate at the time of the pre-proposal conference. Based on his explanation, this argument would have been untimely even if raised during the initial protest. See 4 C.F.R. § 21.2(a)(1). In any event, since it could have been raised

^{2/} As explained in our prior decision, NPS maintains a relationship with a ranching operation that continues to exist on Santa Rosa Island, within the confines of the National Park. The principal supervisor for the awardee, Multiple Use Managers, Inc., has operated a private hunting program for the ranch for the last 12 years, and is uniquely familiar with Santa Rosa Island.

during the initial protest, or even before, this argument does not now provide a basis for reconsideration of our prior decision. AUTOFLEX, Inc.--Recon., B-240012.2, supra.

The request for reconsideration is denied.


James F. Hinchman
General Counsel