147481
L. Glass

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

Decision

Matter of: SDA, Inc.--Reconsideration

File: B-249386.2

Date: August 26, 1992

James H. Roberts, III, Esq., and Steven L. Zelinger, Esq., Manatt, Phelps, Phillips & Kantor, for the protester.
Dennis Mullins, Esq., and Barry D. Segal, Esq., General Services Administration, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior dismissal is denied where protester does not show that prior decision contains errors of fact or law or information not previously considered that warrants reversal of our decision.

DECISION

SDA, Inc. protests the award of a lease to Dominion Cipe Partnership under solicitation for offers (SFO) No. RKS90024, issued by the General Services Administration (GSA) for office space for the Internal Revenue Service (IRS) in Wichita, Kansas.

SDA initially filed a protest with our Office on July 13, 1992, arguing that award to Dominion was improper. SDA contended that Dominion's offer was technically unacceptable because Dominion failed to show compliance with local zoning laws as required by the SFO. On July 14, we dismissed the protest because it failed to state a valid basis of protest. We viewed the issue as a challenge to the awardee's ability to perform the contract which concerned the contracting officer's affirmative determination of the awardee's responsibility. SDA subsequently filed this new protest on July 16, which merely repeated and elaborated on arguments made by the protester in its initial protest. We therefore view this protest as a request for reconsideration of our July 14 dismissal and deny the request because it does not provide any basis that warrants reversal of our prior dismissal.

GSA issued the SFO on May 1, 1991, requesting 71,235 - 75,190 square feet of office and related space and 15 parking spaces for the IRS. The lease term is 20 years with the government having the right to cancel after 10 years. The SFO required offerors to provide with their offers evidence of compliance with local zoning laws or evidence of variances, if any, approved by the local authority.

The protester again argues Dominion's proposal was technically unacceptable because it failed to comply with the zoning requirements. SDA further challenges the agency's affirmative determination of Dominion's responsibility and argues that the solicitation requires offerors to submit evidence of compliance with local zoning laws or evidence of variances at the time of submission of offers. As such, SDA contends that since the awardee allegedly does not comply with the local zoning laws, the award is improper because a definitive responsibility criterion in the solicitation has been misapplied.

As we stated in our dismissal decision, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1992). We dismissed SDA's protest because it neither alleged fraud or bad faith on the part of the agency nor showed that definitive responsibility criteria may have been misapplied. In our dismissal, we stated that evidence of compliance with zoning laws relates to the ability of the successful offeror to perform rather than to whether the offer is acceptable and, therefore, is a matter of responsibility. TRS Design & Consulting Servs., B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168. Moreover, even though the solicitation called for submission of this information with proposals, requirements that relate to responsibility may be satisfied at any time prior to award. Northcoast Redwood Tours, B-231770, July 6, 1988, 88-2 CPD ¶ 14.

SDA also maintains that as of the time of award, Dominion was not in compliance with the local zoning laws. However, this is a matter of contract administration within the discretion of the contracting agency which we do not review under our protest function. 4 C.F.R. § 21.3(m)(1); NFI Management Co., 69 Comp. Gen. 515 (1990), 90-1 CPD ¶ 548. Therefore, we will not consider this contention.

With respect to the protester's argument that the zoning requirement is a definitive responsibility criterion that was misapplied, we have held that except where a solicitation requires specific zoning, so that the

requirement itself is an aspect of the contract work, zoning requirements concern the offeror's responsibility or capability to perform the work. See Fort Wainwright Developers, et al., B-221374.4 et al., June 20, 1986, 86-1 CPD ¶ 573. Here, the SFO contained only a general requirement for zoning approval.

Further, the SFO did not contain any technical evaluation criteria or call for any comparative technical evaluation of offerors. Thus, we do not see how the status of Dominion's zoning approval could be a ground for rejecting or downgrading Dominion's proposal, as a matter of technical acceptability. See NFI Management Co., supra.

The protester has not shown that our prior decision contained errors of fact or law or information not previously considered that warrants reversal of our decision.

The request for reconsideration is denied.

Robert M. Strong
Associate General Counsel