



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BENMOL Corporation--Reconsideration

File: B-251586.2

Date: June 22, 1993

Robert Platt, Esq., Robert Platt & Associates, for the protester.

Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request essentially raises the same matters on reconsideration as were raised in the original protest; protester has not demonstrated that decision was based on error of fact or law.

DECISION

BENMOL Corporation requests reconsideration of our decision denying its protest against the Department of the Navy's award of a contract to Pentech Services, Inc. under request for proposals (RFP) No. N00123-92-R-5272. BENMOL Corp., B-251586, Apr. 16, 1993, 93-1 CPD ¶ 325.

We deny the reconsideration request.

On November 30, 1992, the Navy awarded a cost-plus-fixed-fee, level of effort contract to Pentech for engineering, analytical, and technical support services for the Naval Aviation Depot, North Island, California, and various other Naval bases. BENMOL, the incumbent contractor, was one of six firms which submitted offers. Evaluation was conducted on the basis of four factors, in descending order of importance: personnel qualifications, technical approach, corporate experience, and cost. BENMOL's proposal was evaluated as technically unacceptable because it would have required a substantial revision to correct its deficiencies. Pentech's proposal, rated as outstanding, offered the lowest price of the technically acceptable proposals. In accordance with the provisions of the RFP, the Navy made the award on the basis of initial proposals, without conducting discussions. In its protest, BENMOL contended that the

agency's evaluation was flawed. In denying the protest, we found that the Navy conducted the evaluation in accordance with the listed evaluation criteria and reasonably found that BENMOL's proposal contained numerous deficiencies and failed to provide needed information.

In its request for reconsideration, BENMOL argues that the agency made a "mistake in fact" in the scoring of its proposal and a "mistake of law" in not conducting discussions with BENMOL. To obtain reconsideration, the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1993). BENMOL's allegations do not meet this standard.

For example, with regard to the scoring of BENMOL's senior software systems analyst, the RFP required written commitment letters, and we found that the agency had treated BENMOL and Pentech dissimilarly. While neither BENMOL's nor Pentech's proposed analysts provided a commitment letter, only BENMOL's proposal was downgraded for this omission. However, we found that BENMOL was not prejudiced because adjusting its overall score to match the comparable Pentech score would not have significantly raised its overall score.¹ BENMOL now argues that it was entitled to more points since the score for Pentech's proposed analyst was downgraded for lack of experience, which was inapplicable to BENMOL's proposed analyst. BENMOL is incorrect. We did not further adjust BENMOL's score because its proposed analyst also was properly downgraded for failure to indicate certain experience in environmental programs and to clearly specify certain computer related assignments.

As in its protest, BENMOL again argues that the extra points would have placed its proposal in the competitive range; that is, if its overall proposal score were increased to 72 points, equal to the point score received by another, "marginally acceptable" offeror's proposal, it would have been considered for award. We disagree. First, there is no basis to increase BENMOL's proposal score to this level. Moreover, the purpose of a competitive range determination in a negotiated procurement is to select those offerors with which the agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a). Here, since the award was based on initial proposals, without discussions, for practical purposes the agency did not make

¹BENMOL's new overall score would be 70 points while Pentech's score was 86 points.

a competitive range determination. See Shreiner, Legge & Co., B-244680, Nov. 6, 1991, 91-2 CPD ¶ 432. Rather, it made its award decision by considering the price and technical scores of the three offerors who submitted acceptable proposals. As we observed in our decision, even if BENMOL's proposal had received a slightly higher score, this would not have required that the proposal be considered technically acceptable. BENMOL Corp., supra, at note 4.

In view of the revisions necessary to make BENMOL's proposal technically acceptable, and the absence of any requirement for discussions, FAR § 15.610(a)(4), a slightly higher score alone would not have affected the agency's award determination. For example, a recurring deficiency in BENMOL's proposal was its use of subcontractors. While BENMOL identified various subcontractors and their capabilities, it did not make clear how and to what extent the subcontractors would be used. BENMOL continues to argue that its proposal to use subcontractors on an "as needed" basis was appropriate as it was merely in lieu of "assigning arbitrary hours." Contrary to BENMOL's assessment, we found that the agency correctly perceived BENMOL's subcontractor proposal as deficient and requiring major revision to correct.²

In expressing disagreement with our decision, BENMOL essentially repeats its original protest arguments which we have already considered and rejected.³ Its mere

²In addition, according to the agency, BENMOL's cost proposal was unacceptable because it did not provide detailed cost data for its subcontractors, as required by the RFP. BENMOL's cost proposal stated that all direct labor would be supplied by BENMOL employees, while costs associated with materials would be supplied by others. The agency explained that the materials line item did not take into account labor costs. In its protest, BENMOL explained that it planned to charge for various subcontractor personnel hours when "needed," using the hourly rates proposed for its own employees. However, it did not identify this technique in its proposal, apart from a note regarding one key personnel position (which its technical proposal identified as a BENMOL employee and whose direct labor hours were already listed in the cost proposal) and two non-key personnel positions (identified as independent individuals on an "as needed basis"). Based upon our review, we agree that BENMOL's cost proposal is inaccurate and would require major revision to correct.

³In this regard, BENMOL's reconsideration request contains other examples of alleged evaluation flaws, raised in the original protest, which we have not specifically discussed

disagreement with our judgment provides no basis to disturb our prior decision, G.H. Harlow Co., Inc.--Recon., B-245050.2; B-245051.4, Apr. 10, 1992, 92-1 CPD ¶ 357.

The request for reconsideration is denied.



for James F. Hinchman
General Counsel

in this decision. We have again reviewed them and find that they provide no basis for modifying our decision.