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

398
92-1 CPD 470

Decision

PR

Matter of: HB&A, Inc.--Reconsideration

File: B-245897.2

Date: May 26, 1992

James H. Roberts III, Esq., Manatt, Phelps, Phillips & Kantor, for the protester.
Sylvia Schatz, Esq., John M. Melody, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester does not show any error of fact or law, or present information not previously considered, that would warrant reversal or modification of decision that agency properly adhered to scheduling and other requirements set forth in the solicitation in determining that awardee was the technically superior, lowest cost offeror entitled to the award.

DECISION

HB&A, Inc. requests reconsideration of our decision, HB&A, Inc., B-245897, Feb. 10, 1992, 71 Comp. Gen. ___, 92-1 CPD ¶ 167, in which we denied its protest of the award of a contract to JL Associates, Inc. (JLA) under request for proposals (RFP) No. DLA13H-91-R-2030, issued by the Defense Subsistence Office (DSO), Defense Logistics Agency, for refrigerated warehouse services.

We deny the request.

In its protest, HB&A alleged that JLA, the incumbent contractor providing the services, improperly had been permitted to base its proposal on an experimental truck-loading and delivery schedule instituted under its current contract, rather than on the requirements under the RFP. HB&A argued that this was significant because under the experimental scheduling JLA reduced its third shift from six personnel--one supervisor, one quality assurance person, and four warehousemen--to only two warehousemen, and thereby reduced its performance cost. HB&A concluded that it would have been able to lower its offered price sufficiently to move into line for award had it been permitted to compete on the same basis.

We denied the protest, finding that there was no evidence that the truck-loading and delivery schedule was changed for JLA under the current RFP. First, there was nothing in the record showing that JLA reduced its third shift staffing under its incumbent contract, the premise on which the protest was based. Moreover, we stated that even if the protester were correct that the experimental schedule permitted a reduction in staffing under JLA's incumbent contract, there was no evidence that JLA based its proposal on a continuation of the experimental schedule rather than on the truck-loading schedule set forth in the RFP, which necessitated a fully staffed third shift; JLA's proposal stated that it would perform in accordance with the RFP's schedule.

In its request for reconsideration, the protester maintains that our decision was based upon an error of law. Specifically, HB&A maintains that the agency offered only JLA the opportunity to revise its proposal under the current RFP based on the agency's changed requirements--of which only JLA was aware as a result of the experimental schedule under its incumbent contract. Thus, HB&A contends, we should have held that the agency failed to comply with Federal Acquisition Regulation (FAR) § 15.606(a), which requires an agency to issue an amendment to a solicitation when an agency changes its requirements. HB&A further maintains that our decision was inconsistent with another decision, Management Sys. Designers, Inc.; Information Tech. & Applications Corp.; Epoch Enq'g, Inc., B-244383.4 et al., Dec. 6, 1991, 91-2 CPD ¶ 518, in which we stated that an agency is required to issue an amendment to a solicitation where its requirements change significantly after RFP issuance.

HB&A is correct that FAR § 15.602(a) requires an agency to issue an amendment to a solicitation where the agency changes its requirements after issuance of the RFP. As we found in our initial decision, however, there was no evidence that the agency ever changed the current solicitation's truck-loading and delivery schedule requirement for JLA. Thus, there was no opportunity offered to JLA that was not available to other offerors, and there was no requirement that the agency issue an amendment. HB&A's

disagreement with this finding, in the absence of additional information to support the protester's view, is not a basis for reconsidering our decision. Sal Esparza, Inc.--Recon., B-231097.2, Dec. 27, 1988, 88-2 CPD ¶ 624. HB&A has failed to establish that our prior decision was based on any error of fact or law. 4 C.F.R. § 21.12 (1992).

The request for reconsideration is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel