



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Social Security Administration--Reconsideration

File: B-261226.2

Date: November 30, 1995

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.
Lyman Goon, Esq., Social Security Administration, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

For purposes of resolving a bid protest regarding the content of discussions, the post-award negotiation memorandum prepared by the contracting officer stating that a matter had been discussed with the protester is not controlling where it is contradicted by other evidence in the record, including audit reports that were used as a basis for the discussions, the letter confirming the discussions, the protester's proposal and best and final offer, and the hearing testimony.

DECISION

The Social Security Administration (SSA) requests that we reconsider our decision, Integrity Int'l Sec. Servs., Inc., B-261226, Sept. 1, 1995, 95-2 CPD ¶ 98, in which we sustained the protest of Integrity International Security Services, Inc. against an award to Areawide Services, Ltd. under request for proposals (RFP) No. SSA-RFP-95-1747, issued by SSA for armed guard services at two sites in Baltimore, Maryland. We sustained the protest on the basis that the agency had not conducted meaningful discussions with the protester--for failing to discuss a deficiency in its proposed labor rates--and recommended that the agency reopen discussions and correct its error. SSA requests reconsideration of our decision with regard to both our alleged failure to consider certain evidence in the record, and the timeliness of the protest.

We deny the request for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1995). Repetition of arguments made during consideration of the original protest and mere disagreement with our decision do

not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

SSA alleges that our decision erroneously disregarded a negotiation memorandum, prepared by the contracting officer, which indicated that the agency had in fact apprised the protester of the labor rates deficiency during the final round of discussions.

As discussed in our prior decision, we reviewed the entire record in reaching our decision, including the content of the negotiation memorandum. As noted in our decision, the contracting officer did not keep notes of any of his conversations with Integrity or any of the numerous offerors; the negotiation memorandum is an account of his recollection of events prepared several weeks after the oral discussions occurred. The agency alleges that there was no other evidence in the record, other than the conflicting statements of the parties, from which to draw a conclusion, and that our Office thus should have deferred to the position reflected in the negotiation memorandum.¹ However, our decision clearly found that there was other relevant evidence in the record—including the agency’s audit reports of proposals and best and final offers (BAFO), the letter requesting final BAFOs, Integrity’s proposal and BAFO, and the hearing testimony—and that this evidence did not support, and indeed contradicted, the contracting officer’s recollection of the final round of discussions, and corroborated the protester’s credible account that the labor hour deficiency had not been addressed.² To the extent that the agency argues that we should have relied upon this negotiation memorandum above all other evidence in the record—evidence which we discussed extensively in our decision and which the agency largely ignores in its request for reconsideration³—it

¹Cases upon which the agency relies in support of its position were decided prior to the codification of our Office’s authority to conduct hearings. See 56 Fed. Reg. 3759 (1991); 4 C.F.R. § 21.5. A primary purpose of a hearing is to orally examine the testimony of relevant witnesses, permitting our Office to assess witness credibility and, ultimately, to resolve factual disputes such as the one here. See Town Dev. Inc., B-257585, Oct. 21, 1994, 94-2 CPD ¶ 155.

²As stated in our decision, the contracting officer may have been confusing the content of a post-BAFO conversation with the pre-BAFO discussions, as both occurred weeks prior to his preparing the negotiation memorandum and he had no notes memorializing any of his many oral conversations with offerors during the procurement.

³For example, while the contracting officer stated that he also discussed a problem regarding a wage rate effective date during the final round of discussions, the
(continued...)

essentially is expressing disagreement with our decision; this provides no basis for reconsideration.

On reconsideration, the agency also alleges that the protest was untimely and should have been dismissed because Integrity failed to protest the discussions issue within 10 days after the post-BAFO conversation between the contracting officer and Integrity's representative; at this time the contracting officer allegedly stated to Integrity's representative that he had held discussions with another representative from Integrity. In timeliness disputes, we will resolve any reasonable doubt in favor of the protester. Eastern Trans-Waste of Maryland, Inc., B-250991, Mar. 2, 1993, 93-1 CPD ¶ 192. As stated in our decision, the protester originally asserted that the agency had solicited proposal revisions during this post-BAFO conversation, including correction of the labor hour deficiency, and protested on the basis that the agency did not properly consider these requested revisions. In its report on the protest, SSA denied for the first time that it had requested post-BAFO revisions, and essentially asserted, also for the first time, that the pre-BAFO discussions on this issue had been meaningful.⁴ Since it was the agency report that first established the agency's position, and Integrity protested the adequacy of the pre-BAFO discussions within 10 days after receiving the report, its protest on this issue was timely.
4 C.F.R. § 21.2(a)(2).

The request for reconsideration is denied.

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³(...continued)

record shows that this problem actually only became apparent in Integrity's final BAFO and could not have been discerned from Integrity's proposal as of the time the final discussions were conducted. In its reconsideration request, SSA does not dispute our determinations regarding this evidence, which contradicts the contracting officer's version of the final round of discussions.

⁴SSA now also alleges that Integrity should have been aware of the agency's position from a post-award debriefing. This was information which SSA could have, but did not, present during the protest, and the agency may not now use it as a basis for reconsideration. CB Commercial Gov't. Servs. Group--Recon., B-259014.2, Apr. 3, 1995, 95-1 CPD ¶ 176.