



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Defense Logistics Agency; Moheat Environmental Services--
Reconsideration

File: B-270538.5; B-270538.6

Date: November 20, 1996

Kenneth A. Martin, Esq., Riley & Artabane, for Moheat Environmental Services, Inc.,
the intervenor.

Gail West and Thomas J. Wallenfang, Defense Logistics Agency, 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

Submission of additional information by an agency, which was available and could
have been submitted by the agency during the pendency of a protest which was
sustained, and expressions of disagreement with a protest decision which fail to
show that the decision was based on either factual or legal error warranting
reversal of that decision, do not provide a sufficient basis for reconsideration of the
protest decision.

DECISION

The Defense Logistics Agency (DLA) and Moheat Environmental Services, Inc.
request reconsideration of our decision, PMT Servs., Inc., B-270538.2, Apr. 1, 1996,
96-2 CPD ¶ 98, which sustained PMT's protest of DLA's evaluation of PMT's past
performance and the award to Moheat under request for proposals (RFP)
No. SP4400-95-R-0016 for hazardous waste disposal services at various locations in
Texas.

We deny the requests 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. § 21.14(a) (1996). Information not previously considered which
may warrant reconsideration must have been unavailable to the requesting party
when the initial protest was being considered. CB Commercial Gov't Servs. Group--
Recon., B-259014.2, Apr. 3, 1995, 95-1 CPD ¶ 176. Repetition of arguments made

during consideration of the original protest or mere disagreement with our decision does not provide a basis for reconsideration. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

In sustaining the protest, we determined that DLA's cost/technical tradeoff decision was unreasonable because it was based on an inadequate evaluation of PMT's past performance. DLA alleges that our decision was based on errors of fact that warrant reversal of the decision. In order to identify these alleged errors, DLA now provides additional information, including a detailed analysis of each offeror's past performance history and the contract requirements,¹ and also responds, for the first time, to statements made by PMT in its protest letter and repeated in its subsequent comments on the agency report. This is information which the agency could and should have provided as part of its report on the protest; presentation of this information now does not provide a basis for reconsideration. CB Commercial Gov't Servs. Group--Recon., supra.

Moheat disagrees with our finding that DLA's evaluation of past performance was inadequate and alleges that we improperly exceeded our standard of review by imposing our own judgment in place of agency discretion in the evaluation of proposals. Moheat also asserts that this decision is incorrect because we did not find the evaluation to be inconsistent with the stated evaluation criteria. Our standard of review in protests against allegedly improper evaluations is to examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria. Chem-Servs. of Indiana, Inc., B-253905, Oct. 28, 1993, 93-2 CPD ¶ 262; SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320. Our Office may, as we did in the challenged decision, question evaluations and award decisions where they are not reasonably based or are inadequately documented, even if they are otherwise consistent with the evaluation criteria. SDA Inc., supra; Ashland Sales & Serv., Inc., B-255159, Feb. 14, 1994, 94-1 CPD ¶ 108.

In our decision, we found inadequately supported by the record the agency's determination under the stated evaluation criteria that PMT's proposal warranted a marginal rating because of PMT's prior contracts' lack of similarity in complexity as compared to the solicitation requirements. We thus concluded that the evaluation and source selection were unreasonable based on the record; this is consistent with and proper under the applicable standard of review. See id.

¹To the extent DLA's current submission reassesses PMT's past performance in relation to the specific requirements of the solicited contract, it is essentially conducting the reevaluation of proposals which we recommended as corrective action in our decision on the protest.

Moheat also contends that our decision was inconsistent with our decision in Advanced Envtl. Technology Corp., B-259252, Mar. 20, 1995, 95-1 CPD ¶ 149, which also involved the selection by DLA of a higher priced, higher rated offeror under a procurement for waste disposal services. In that case, we found the agency's evaluation of the protester's past performance as acceptable to be reasonable because, unlike the present case, the decision was supported by the record. Moreover, contrary to Moheat's contention, the evaluation criteria in the two cases are different: complexity of prior contracts was not a specifically stated evaluation factor in Advanced Envtl. Technology Corp., whereas it was a stated evaluation criterion here, on which the agency relied heavily in evaluating PMT's past performance as marginal. Neither the RFP nor the agency's report here, however, defined what complexity was; nor did the record evidence what the agency considered reasonable indicia of complexity in evaluating past performance.² While Moheat claims our decision imposed our own definition of "complexity," we only discussed some examples of what complexity of contract performance logically could be in order to illustrate that, absent some similar analysis of the stated complexity criterion based on RFP requirements and specific past performance histories, the agency's evaluation was not supported by the record and was thus unreasonable.

Otherwise, Moheat's request for reconsideration does little more than selectively recite the facts stated in the decision and generally express disagreement with that decision. This provides no basis for reconsideration. See R.E. Scherrer, Inc.-- Recon., supra.

The requests for reconsideration are denied.

Comptroller General
of the United States

²The agency now suggests that complexity is not an additional evaluation criterion as was stated in the RFP, but rather consists of the other stated evaluation criteria which relate to contract requirements, i.e., waste quantities, variety of pick up locations and waste streams, and performance time frames. Although the agency now offers a detailed analysis of past performance under the intended evaluation criteria, as addressed in our decision, the agency's evaluation was not reasonable based on the protest record.