The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Applied Power Technology Co. and Contract Services Co., Inc.--A Joint Venture--Request for Reconsideration
File: B-227888.2
Date: March 10, 1988

DIGEST

Request for reconsideration is denied where protester reiterates arguments from original protest, which were rejected in General Accounting Office's decision, and disagrees with decision, but presents no argument or information establishing that decision was legally or factually erroneous.

DECISION

A joint venture comprised of Applied Power Technology Company and Contract Services Company, Inc. (APTCO-CSC), requests reconsideration of our decision in Applied Power Technology Co. and Contract Services Co., Inc.--A Joint Venture, B-227888, Oct. 20, 1987, 87-2 CPD ¶ 376, denying APTCO-CSC's protest against its rejection as a nonresponsible bidder, under invitation for bids (IFB) No. GS-07-P-87-HT-C-0098/7SB, issued by the General Services Administration (GSA) for operation and maintenance services at the Denver Federal Center.

We deny the request.

In its original protest APTCO-CSC argued primarily that GSA's negative characterization of its performance record was based on inaccurate information and failed to take into consideration recent improvements in the firm's performance ratings. We concluded that the agency's determination of the firm's nonresponsibility was reasonable based on information showing prior unsatisfactory performance, even though there also was some indication of recent improvements in the firm's performance. In making the nonresponsibility determination, the contracting officer obtained reports of unsatisfactory or marginal performance from contracting officials familiar with CSC's performance under six of its

eight contracts with the government completed in the years 1983 through 1987. Although the protester attributed reports of deficiencies in CSC's performance under two of the contracts to differing interpretations of the specifications, we found the record clearly indicated that the contracting officials contacted viewed CSC's overall performance as basically deficient and its interpretation of the specifications as unreasonable. We also held that, although options were exercised under one of the contracts in question, GSA nonetheless properly considered unsatisfactory performance information under that contract in making its nonresponsibility determination.

The protester requests reconsideration of our decision on the basis that past performance of a prospective contractor is legally relevant in a responsibility determination only insofar as it relates to current performance capability, and that current capability thus should be controlling. The protester repeats its protest position that the agency improperly relied more on the firm's performance under contracts completed in 1983 through 1985, than on performance under more recent contracts. Additionally, the protester contends that the GSA nonresponsibility decision and our decision failed to consider information on a corrected performance rating for a recently completed contract at the Naval Air Station, Point Mugu, California.

APTCO-CSC's request for reconsideration provides no basis for us to question the correctness of our October 20 decision. APTCO-CSC's request is primarily a repetition of its previous arguments, and a disagreement with our decision. The protester has not made a showing that our decision contained errors of fact or law or information not previously considered that would warrant reversal or modification. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1987); Roy F. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. Reiteration of arguments made during resolution of the original protest, or mere disagreement with our decision, does not meet the standard for reconsideration. Id. We nevertheless briefly readdress the protester's arguments below.

First, contrary to APTCO-CSC's position, there is no requirement either in the Federal Acquisition Regulation (FAR) or established in our past decisions, that a nonresponsibility determination be based only on an offeror's most recent performance history to be reasonable or even that this most recent information must be controlling. Rather, as stated in our October decision, we view the

consideration of performance under older, but recent, similar contracts in a responsibility determination as entirely reasonable, particularly where recent performance reviews are mixed, as here. The protester argues that since FAR § 9.104-3(c) states that a prospective contractor should be presumed nonresponsible if it is or recently has been seriously deficient in contract performance, it should follow that a prospective contractor should be presumed responsible if it has recently performed successfully. This line of reasoning is specious. The cited provision only indicates a circumstance under which a firm should be found nonresponsible; it nowhere purports to limit the contracting officer's broad discretion in determining what information should weigh most heavily in his consideration of firm's responsibility.

The protester also maintains that our decision is contrary to our past decisions disapproving nonresponsibility determinations not based upon the most current information available. See 51 Comp. Gen. 588 (1972). The protester misunderstands our decisions as precluding consideration of a firm's performance under any but the most recently performed contracts. While we have held that current information cannot be ignored, the contracting officer is not precluded from balancing a firm's performance history in older, but recent, similar contracts against current performance ratings for purposes of predicting future performance quality. There is no indication (again, as the protester suggests) that the protester's improved performance ratings in more recent years were ignored; rather, the contracting officer simply was not satisfied that recent improvements in performance, to the exclusion of earlier performance history, were the best indication of APTCO-CSC's overall current performance capability.

Finally, the protester contends that our decision improperly endorsed to reliance on erroneous information concerning CSC's past performance at Point Mugu. The protester points in this regard to information in the record showing that the data on its performance at Point Mugu are so conflicting that GSA should have made further inquiries of the contracting officer at Point Mugu. There is no evidence in the record, however, that GSA has ever received a favorable report on CSC's performance under the Point Mugu contract at the time of the responsibility determination. In any case, even without inclusion of the Point Mugu contract, the record remains that GSA received reports of satisfactory or good performance by CSC on only two of the other seven recent CSC contracts completed in the years 1983 to 1987;

for the remaining five contracts GSA received reports of unsatisfactory or marginal performance. Accordingly, there is no basis to reconsider the reasonableness of the agency's nonresponsibility determination based solely on consideration of CSC's performance history at Point Mugu.

The request for reconsideration is denied.

James F. Hinchman
General Counsel