



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alamo Acoustical Restoration Company--Request for
Reconsideration

File: B-228429.6

Date: April 12, 1988

DIGEST

Request for reconsideration is denied where the protester does no more than restate arguments previously considered and raise an argument it could have raised during the original protest.

DECISION

Alamo Acoustical Restoration Company requests reconsideration of our decision Alamo Acoustical Restoration Co., B-228429.2, Feb. 16, 1988, 88-1 CPD ¶ 150, wherein we denied its protest of any award under solicitation No. F41800-87-R-1627, for maintenance of military family housing at Lackland Air Force Base. We deny the request for reconsideration.

Alamo argued in its protest that the agency prevented it from submitting a technically acceptable proposal by failing to provide a complete copy of the solicitation package prior to the closing date for receipt of proposals. We rejected this argument on the ground that Alamo had not diligently sought to obtain a complete solicitation. In this regard, although the procurement had been synopsisized twice in the Commerce Business Daily (CBD), the first time 3 months prior to the closing date, Alamo did not promptly request the solicitation and, as a result, was not placed on the initial bidders list. When Alamo later requested the solicitation and received an incomplete solicitation package 24 days prior to the proposal due date, Alamo asked for and was promised a complete copy 17 days prior to the due date. Alamo did not subsequently pursue the matter and instead submitted a proposal based on what it knew to be an incomplete solicitation. Since nothing in the record indicated that the Air Force had sought to exclude Alamo, Alamo's lack of diligence was determinative.

In its request for reconsideration, Alamo reiterates its contention that the agency's failure to provide Alamo with the complete solicitation package despite its requests was inconsistent with the agency's obligation to seek full and

open competition, as explained in our decision Trans World Maintenance, Inc., 65 Comp. Gen. 401 (1986), 86-1 CPD ¶ 239. Our Bid Protest Regulations require, however, that a request for reconsideration detail the factual and legal grounds upon which reversal or modification is warranted, 4 C.F.R. § 21.12(a) (1987); the mere restatement of a previously-raised argument does no more than indicate disagreement with our decision, and thus does not meet that standard and will not be considered. Atrium Building Partnership--Request for Reconsideration, B-228958.2, Dec. 30, 1987, 87-2 CPD ¶ 645. In any event, we find this case readily distinguishable from Trans World, in which we sustained the protest because the contracting agency did not provide the incumbent contractor with the solicitation despite the incumbent's numerous, timely requests for it. Unlike the incumbent in Trans World, Alamo was not previously known to the contracting activity as a firm interested in and capable of providing the required services; moreover, as already discussed, Alamo did not make a diligent effort to obtain a complete solicitation package.

Alamo also alleged in its original protest that the solicitation should have been issued as a small disadvantaged business (SDB) set-aside. We denied this aspect of the protest on the ground that the contracting officer's business judgment that there was no reasonable expectation of receiving offers from at least two responsible SDB concerns was within his discretion and not unreasonable.

Alamo asserts as a further basis for reconsideration that the decision to set aside the procurement for SDBs was not a business judgment within the discretion of the contracting officer because Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 19.502.72, 52 Fed. Reg. 1626 (May 4, 1987), which places SDB set-asides first in order of precedence for set-asides, does not refer to "business judgment" of the contracting officer. This argument ignores the import of our decision on this point. As indicated there, we will review the contracting officer's decision not to set aside a procurement for SDBs only to determine whether the contracting officer abused his discretion in reaching his decision; our reference to business judgment was merely to explain the nature of the discretion involved. As indicated in our decision, this standard of review is consistent with our interpretation of regulations governing similar set-asides, and in no way conflicts with DFARS § 19.504, which merely prescribes the order of preference to be used in selecting from among the set-asides for which a particular procurement qualifies.

Finally, Alamo renews its argument that the contracting officer reasonably should have expected to receive two

Finally, Alamo renews its argument that the contracting officer reasonably should have expected to receive two acceptable SDB offers, and hence should have set aside the procurement exclusively for SDBs. As indicated above, the restatement of a previously-raised argument does not provide a basis for reconsideration. Atrium Building Partnership--Request for Reconsideration, supra.

The request for reconsideration is denied.

fn Ronald Berger
James F. Hinchman
General Counsel