The Comptroller General
of the United States

Washington, D.C. 20548

135580

Decision

Matter of: Reach All, Inc.--Request for Reconsideration

File: B-229772.2

Date: April 13, 1988

DIGEST

Request for reconsideration is denied where protester fails to show any error of law or fact warranting reversal of finding that contracting agency had presented a reasonable explanation in support of alleged unduly restrictive specification as necessary to meet its minimum needs.

DECISION

Reach All, Inc. (RAI), requests reconsideration of our decision in Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ ____, in which we denied RAI's protest that a specification requirement in an Air Force request for proposals (RFP) for truck mounted aerial servicing platforms for C-5 aircraft was unduly restrictive of competition.

We deny the request.

RAI protested the RFP requirement that the platforms have a minimum horizontal reach of 58 feet. We denied RAI's protest based upon our finding that the Air Force had established that a 58-foot horizontal reach was its minimum requirement to ensure timely repair, servicing, and deicing of C-5 aircraft during the launch/recovery sequence. Important to the Air Force was a need that the unit be able to accomplish these functions while positioned far enough away from the aircraft to avoid interference with other equipment and to be able to reach various areas of the aircraft without being repositioned numerous times.

In its request for reconsideration, RAI alleges factual errors and, in disagreeing with our prior decision, essentially restates its original protest arguments. In

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particular, RAI urges that it established the unreasonableness of the Air Force requirement and maintains that the requirement results in a sole-source procurement.1/

For example, while RAI continues to dispute the Air Force's findings that a unit with less than a 58-foot horizontal reach would have to be positioned too close to the aircraft and would interfere with other equipment, it has done no more than assert that the Air Force is incorrect. Likewise, it merely disputes that a 58-foot reach is required for timely deicing of the aircraft to avoid the necessity of repositioning the unit numerous times.2/ RAI's assertions, made in its original arguments and rejected in our prior decision, are no more persuasive on reconsideration.

RAI continues to claim that the Air Force requirement will result in a sole-source procurement, allegedly because only the manufacturer of the units currently in operation can meet the specifications. RAI reiterates unsupported allegations made in its original protest that a third manufacturer is incapable of meeting the requirement, notwithstanding repeated statements by that manufacturer during

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1/ In addition to reasserting the arguments it made in its original protest, RAI also alleges that its proposal and certain statements made at the conference established the unreasonableness of the Air Force requirement. However, at the time of RAI's protest, proposals had not yet been opened and RAI did not furnish us with a copy of its proposal. Further, it was emphasized at the conference that our decisions are based solely on the written record and that all statements parties wished us to consider had to be submitted in writing. Most of the conference statements on which RAI now relies were not submitted to this Office within the time allowed for submission of conference comments. Since they were not part of the record, they were not considered, and it is too late to have them considered now. See Little Susitna Company, 65 Comp. Gen. 651, 653-654 (1986), 86-1 CPD ¶ 560 at 3-4.

2/ RAI claims that a reach of only 44 feet is necessary to timely deice the entire tail section of a C-5 aircraft, thus finding error in our reliance upon the Air Force's determination that 58 feet is required without repositioning the unit numerous times. Implicit in the Air Force determination is the necessity of reaching not only the tail section without repositioning the unit, but all along the fuselage and to the wing tip as well. See Reach All, Inc., B-229772, supra, 88-1 CPD ¶ ____ at 3. Therefore, our prior decision was not erroneous in this regard.

the protest proceedings that it intended to submit a proposal which took no exception to any specifications. RAI's disbelief that a competitor is willing to design a unit meeting the Air Force requirements carries no weight in establishing that there will be a sole-source procurement.3/

RAI takes specific issue with our decision with regard to its argument that the Air Force had "approved" an existing RAI unit (with less than a 58-foot reach) in 1981. In our prior decision we noted that, notwithstanding 1981 correspondence indicating approval, 1980 correspondence emphasized the requirement that the unit have access to the entire aircraft tail section without being repositioned and stated that the upper boom needed to be modified to telescope to meet this requirement. RAI now claims that its unit was "approved" without this modification. Our statement of the facts was based on correspondence submitted by RAI and there is nothing in the record to support RAI's current assertion.

RAI also takes issue with our assessment that it had abandoned its protest of the addition of five units to the original solicitation through an amendment. We think our treatment of this issue was appropriate since RAI did not explicitly refer to this aspect of its protest in its comments on the report. Nevertheless, in noting the apparent abandonment of this issue, we observed that there was nothing objectionable in the amendment since it was made prior to the opening of any proposals and all potential offerors were advised of the increased requirement. See Federal Acquisition Regulation § 15.606 (FAC 84-16). The protester has submitted nothing to indicate this conclusion was in error.

Since the protester has presented no argument or information establishing that our prior decision is legally or factually erroneous, we deny the request for reconsideration. See 4 C.F.R. § 21.12(a) (1987).

RAI requests that it be reimbursed for its proposal and protest costs. Inasmuch as we did not find that the

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3/ In any event, an argument that a specification is "written around" a competitor's product or limits the possible sources to one firm is not a valid basis for protest, where, as here, the agency has established that the specification is reasonably related to its minimum needs. Repco Inc., B-227642.3, Nov. 25, 1987, 87-2 CPD ¶ 517.

procurement failed to comply with any statutes or regulations, RAI is not entitled to costs. 4 C.F.R. § 21.6(d).

James F. Hinchman
General Counsel