The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Apex International Management Services, Inc.--Request for Reconsideration

File: B-231715.3

Date: January 10, 1989

DIGEST

1. To be considered, a request for reconsideration must indicate error of fact or law or information not previously considered that would warrant reversal or modification of a prior decision. The mere restatement of arguments previously considered, or mere disagreement with the initial decision does not meet this standard.

2. The presence of some risk under a solicitation because a reimbursement provision does not absolutely limit contractor liability does not render the solicitation improper since bidders are expected to consider the degree of risk in calculating their bids.

DECISION

Apex International Management Services, Inc., requests reconsideration of our decision, Apex International Management Services, Inc., B-231715, Aug. 19, 1988, 88-2 CPD ¶ 163, in which we denied Apex's protest that a clause providing for contractor reimbursement for certain materials, under invitation for bids (IFB) No. F38601-88-B0033, issued by the Air Force for family housing unit maintenance, was vague and ambiguous. We found that the clause in question was adequate to permit bidders to compete intelligently and on an equal basis. Subsequent to our decision, Apex requested and the Air Force provided clarification regarding the reimbursement clause in question, and Apex contends that the clarification, in conjunction with our decision, creates an ambiguity in the solicitation. We disagree, and we deny the request for reconsideration.

In its initial protest, Apex contended that the clause calling for contractor reimbursement for material, parts and supplies in excess of $75 per item per job order was ambiguous. We considered the clause in conjunction with a

referenced IFB clause which defined "item," and concluded that the solicitation clearly provided that the $75 threshold applied to each defined item of material supplied by the contractor, and not to each job order. We noted that the Air Force report suggested that the agency may have intended the limit to apply to each job order, without respect to item cost, and suggested that if the Air Force so intended, the solicitation should not contain the "per item" limitation in the reimbursement clause. In its clarification, the Air Force indicated that, in fact, the $75 threshold was intended to apply per item, not per job order, and therefore, no change in the solicitation was needed. While Apex takes exception to this interpretation, it is consistent with our decision, and Apex's argument in this respect is merely a restatement of its prior argument, which was carefully considered and rejected in our initial decision.

To be considered, a request for reconsideration must indicate that our prior decision contained errors of fact or law or information not previously that warrants its reversal or modification. See 4 C.F.R. § 21.12(a) (1988); I.T.S. Corp.--Request for Reconsideration, B-228919.2, Feb. 2, 1988, 88-1 CPD ¶ 101. The mere repetition of arguments made during the initial protest or disagreement with our decision does not meet this standard. Id.

Apex also points out that our initial decision indicated that an estimate of $91,540.25 contained in the IFB for the cost of all reimbursable supplies included the amount represented by the initial $75 nonreimbursable component per item, while the Air Force clarification states that the estimate does not include the first $75 per item. Apex contends that this creates an ambiguity. There is no ambiguity; the Air Force has now unequivocally provided that the IFB estimate does not include the first $75 per item component. The assumption in our decision was based on an interpretation of the identical clause in a prior case, DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43. We addressed this matter in conjunction with Apex's contention that the current estimate was inaccurate as evidenced by calculating the reasonable impact of the change from a previous $50 nonreimbursable component in the prior historical estimate which had been provided by the Air Force. However, as we indicated in our initial decision, there is no requirement that estimates provided in a solicitation be absolutely correct. Rather, they must be based on the best information available and present a reasonably accurate representation of the agency's actual needs. Aleman Food Service, Inc., B-219415, Aug. 29, 1985, 85-2 CPD ¶ 249. As we further pointed out in our initial decision, since Apex has

performed the contract in question over the past 3 years and has received reimbursement through application of the same deductible formula, Apex is itself familiar with the Air Force's intended calculation and cannot realistically be considered to have been misled by the solicitation. Accordingly, no ambiguity has been created regarding the reimbursement estimate, and the inaccurate assumption contained in our prior decision has no bearing on the legal basis of the decision.

In its request for reconsideration, Apex is again arguing, as it did in its initial protest, that contractor liability for material cost is insufficiently limited. We addressed that issue in detail in the initial decision, pointing out both that there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate any risk or remove any uncertainty from the mind of every prospective bidder. Analytics, Inc., B-215092, Dec. 31, 1984, 85-1 CPD ¶ 3. Here, six other bidders attended a pre-bid conference and raised numerous questions, but none questioned the materials reimbursement clause or estimate. Certainly Apex, as the incumbent for the last 3 years, is in the best position to make the required estimates and predictions to accurately assess its potential exposure under the clause. As we indicated in the initial decision, the business reality is that computing prices for this type of contract, which requires inspections and estimates, involves an element of risk which the agency is not required to eliminate, and which bidders are expected to allow for in computing their bids. Apex is in the best position of any bidder in this regard and simply is not entitled to a guarantee regarding the exact amount of reimbursement that it will receive.

The request for reconsideration is denied.

James F. Hinchman
for General Counsel