The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Golden Triangle Management Group, Inc.--
Request for Reconsideration

File: B-234790.2

Date: August 11, 1989

DIGEST

Request for reconsideration of a decision denying a protest that agency underestimated moving costs in evaluating offers for space is denied where the protester does not provide any new information or demonstrate any errors of law that would warrant reconsideration of the prior decision.

DECISION

Golden Triangle Management Group, Inc., requests reconsideration of our decision, Golden Triangle Management Group, Inc., B-234790, July 10, 1989, 89-2 CPD ¶ ___, wherein we denied in part and dismissed in part its protest of an award of a lease to Beaumont Zane Alan Associates, Ltd. (BZA), under solicitation No. R7-67-88, issued by the General Services Administration (GSA) for office space. We deny the request for reconsideration.

The solicitation called for a 10-year lease term, with the government having termination rights after 5 years. In evaluating the proposals, GSA added moving costs to BZA's 10-year prices (but not to Golden Triangle's prices, since the firm currently was furnishing the space). In its protest, Golden Triangle asserted that GSA underestimated the impact of moving costs on the awardee's offered price by amortizing the costs over a 10-year period. According to the protester, the proper amortization period was 5 years since, under the terms of the solicitation, the government had the right to terminate the lease after 5 years. In support of its position, Golden Triangle cited the GSA Supplement to the Federal Acquisition Regulation (GSAR) § 570.502(3)(ii), which, it asserted, provides for amortizing estimated moving costs over the "firm" term of the lease.

We held that this regulation was not controlling, since it is applicable not to the evaluation of offers for space but to the more abstract preliminary determination of whether to negotiate succeeding leases for the continued occupancy of space in a building. In any case, we found that GSA had essentially complied with the regulation, since acceptance of a proposal by the government would obligate the offeror to make the space available for 10 years, and GSA expected to remain in the space for the full 10-year lease term. We viewed the government's right to terminate after 5 years as serving a purpose similar to the standard termination for convenience clause, which also has no effect on the contract term in proposal evaluation.

In its request for reconsideration, Golden Triangle first asserts that we overlooked the affidavit of a former GSA employee, which it submitted with its protest. The affidavit stated the employee's view that "the cost of moving . . . must be amortized over the firm term (only) of the lease in order to ensure they will be fully recovered," and that, while previously employed by GSA, it was the employee's experience that "the firm term, rather than the full lease term, was used as the basis for the evaluation of moving costs." Golden Triangle believes this affidavit evidenced the proper approach for assessing moving costs under the circumstances here.

We did not address the affidavit in our decision because a former employee's opinion is not probative as to the legal requirements for assessing moving costs in evaluating proposals. Regulatory and statutory provisions define the legal perimeters for such evaluations, and we specifically found in our decision that GSA's actions were not inconsistent with any such restrictions. This assertion thus does not warrant reconsidering our decision.

Next, Golden Triangle reiterates its prior argument that GSAR § 570.502(3)(ii) is relevant to this case; according to the protester, while this regulation may not apply directly to the evaluation of offers, it clearly establishes a procedure for handling the amortization of moving costs. In this regard, Golden Triangle again argues that the government's right to terminate after 5 years rendered the lease a 5-year lease with an option to renew for 5 years.

As indicated above, we fully considered these arguments in our prior decision. While it is clear that Golden Triangle does not agree with our decision, it is well-established that such mere disagreement does not provide a valid basis for reconsideration. See TCA Reservations, Inc.--Reconsideration, B-218615.2, Oct. 8, 1985, 85-2 CPD ¶ 389.

Finally, Golden Triangle asserts that our decision overlooked the fact that prior to submission of its final best and final offer (BAFO) the awardee improperly was afforded more than one opportunity to make its proposal acceptable during the negotiation process. Golden Triangle is incorrect. In fact, our decision fully discussed this aspect of the protest, holding that GSA had properly afforded both offerors an opportunity to correct deficiencies in their initial BAFOs in the course of negotiations; changes to technical proposals generally are permitted in BAFOs. See Setac, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121.

As Golden Triangle has not established that our prior decision was based on errors of fact or law, we deny the request for reconsideration. 4 C.F.R. § 21.12(a) (1988).

James F. Hinchman
General Counsel