Decision

Matter of: International Filter Manufacturing Corporation--
Request for Reconsideration

File: B-235049.2

Date: August 21, 1989

DIGEST

Request for reconsideration of initial decision holding that
protester who failed to acknowledge a material amendment was
properly considered ineligible for award is denied where
evidence submitted by protester does not demonstrate that
procuring agency deliberately and in bad faith failed to
send the amendment to the protester.

DECISION

International Filter Manufacturing Corporation (IFM)
requests reconsideration of our decision in International
Filter Mfg. Corp., B-235049, June 21, 1989, 89-1 CPD ¶ 586,
denying IFM's protest concerning request for proposals (RFP)
No. DLA700-88-R-2808, issued by the Defense Logistics
Agency (DLA) for filter elements.

We deny the request for reconsideration.

The solicitation was issued on September 6, 1988, for filter
elements, National Stock Number (NSN) 2940-01-131-7666, to
be manufactured in accordance with Drawing Number 65408
B-D48, amendment No. 2. Three amendments to the solicita-
tion were issued and October 21 was established as the
closing day for the receipt of proposals. DLA received six
offers in response to the solicitation with Donaldson Co.,
Inc., submitting the apparent low price of $34.77 per unit
and IFM submitting a price of $37.05 per unit. Subse-
quently, DLA learned that the specification for the filter
element was incorrect and issued amendment No. 4 to the RFP
which, among other things, revised the dimensions of the
filter element and incorporated the most recent revision to
the drawing. IFM did not return the amendment by the
November 28 due date.

DLA initially awarded the contract to Donaldson, the firm it
believed submitted the low offer. Following a protest to

DLA by IFM, however, DLA realized that because IFM was a small disadvantaged business, pursuant to the RFP IFM was entitled to a price evaluation preference and was in fact the low, evaluated offeror. DLA also found, however, that IFM was ineligible to receive the contract award on the basis of its initial offer because IFM did not acknowledge amendment No. 4, a material amendment. In order to give IFM the opportunity to acknowledge amendment No. 4, DLA decided to reopen negotiations with all offerors in the competitive range. Amendment No. 5, which reopened negotiations, was issued on March 17, 1989; amendment No. 6, which established April 14 as the due date for responses to amendment No. 5, was issued on March 28.

IFM protested to our Office that DLA had improperly reopened the competition because IFM was entitled to the award based on its status as the low evaluated offeror following the submission of initial proposals. In its comments on the agency report IFM also argued that its offer should not have been rejected for failure to acknowledge amendment No. 4 because IFM did not receive the amendment until after it filed its protest. We denied the protest.

In its request for reconsideration, IFM asserts that DLA's pattern of dealing with IFM contradicts one of our conclusions, that IFM's failure to receive amendment No. 4 was not the result of a deliberate attempt by DLA to exclude IFM from the competition. In this regard, IFM points to the fact that during a prior solicitation for filter elements for which IFM was the low offeror, DLA found that IFM was ineligible to receive the award because IFM did not have a "cage code,"1/ and DLA canceled the solicitation without giving IFM the opportunity to obtain one. IFM also complains that in the present case it did not receive amendment Nos. 5 and 6 until it requested them from DLA. IFM also argues that we should not give any weight to the fact that DLA reopened the solicitation to permit IFM to acknowledge amendment No. 4 because at this point, IFM's prices are exposed, and other offerors thus have the opportunity to underbid IFM and deny IFM a fair chance to compete for the award.

In our view, the arguments presented by IFM in its request for reconsideration do not demonstrate that DLA deliberately attempted to preclude IFM from participating in the procurement. First, DLA has informed our Office that IFM's
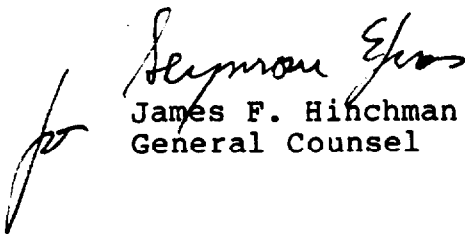

1/ A cage code is a commercial and government entity code given to contractors so that payment can be executed and to track the ownership of technical data.

offer on the earlier solicitation was not rejected because IFM did not have a cage code. Rather, DLA canceled the solicitation because after offers were received DLA realized that the solicitation requested a greater quantity of filter elements than it needed. DLA reports that it issued a resolicitation for the correct number of filter elements and that IFM did submit an offer on the resolicitation, but was not low.

Concerning the current solicitation, DLA reports that on March 5, IFM was told that amendment No. 5 would be issued and that IFM would be required to acknowledge it as well as the prior amendments which IFM had not acknowledged. Thus, it does not appear that DLA was attempting to keep IFM unaware of solicitation amendments.

Finally, insofar as IFM argues that reopening discussions will prejudice it because IFM's price and thus its competitive position were exposed and is part of DLA's deliberate attempt to exclude IFM from the competition, we note that the solicitation was an RFP, and not an invitation for bids (IFB). Unlike where an IFB is used, there is no public opening of offers received in response to an RFP and there is no evidence to suggest that in this case the offers were publicly opened or that IFM's price was exposed by DLA. In fact, it is IFM who exposed its own price during the protest, well after responses to amendment Nos. 4, 5 and 6 were due. Consequently, we find that IFM's argument does not affect our conclusion that DLA's decision to reopen the competition is inconsistent with the allegation that DLA was deliberately attempting to exclude IFM from the competition.

The request for reconsideration is denied.

James F. Hinchman
General Counsel