Ms. Williams

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tecom Industries, Inc.--Request for Reconsideration

File: B-236371.2

Date: February 13, 1990

Ronald S. Perlman, Esq., Porter, Wright, Morris & Arthur, for the protester.
Paula Williams, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester simply reiterates arguments previously raised and considered and raises new arguments which fail to show any error of fact or law that would warrant reversal or modification of prior decision.

DECISION

Tecom Industries, Inc., requests reconsideration of our decision, Tecom Indus., Inc., B-236371, Dec. 5, 1989, 89-2 CPD ¶ 516, denying its protest concerning the proposed sole source reprocurement of Walleye antennas by the Naval Avionics Center under request for proposals (RFP) No. N00163-89-R-0652. We deny the request for reconsideration.

Tecom, the defaulted contractor, had originally protested that the proposed sole source award to UB Corporation was improper because the Navy did not obtain competition for the reprocurement to the maximum extent practicable. We held that the Navy reasonably determined that Tecom was not a potential source that should have been solicited because the protester has a long-standing problem with meeting the gold plating specification requirements for the antennas and that the Navy properly limited the competition for the reprocurement to the only known qualified source that was technically capable of fulfilling the requirements by the required delivery date.

In reaching our conclusion, we rejected Tecom's claim that the firm had overcome the difficulties associated with gold plating the antennas. We pointed out that even after the protest was filed, at Tecom's request the Navy examined some of Tecom's plated antennas and the examination revealed that Tecom still had not achieved a repeatable plating process capable of producing acceptable antennas. We also pointed out that although Tecom asserted in its post-conference comments that it finally had identified UB's gold plating subcontractor and had received confirmation that if Tecom were awarded the production contract that this subcontractor would be a source of plating if needed, the protester had not refuted the Navy's position that the firm was not a potential source that should have been solicited.

In its request for reconsideration, Tecom contends that we erred in: (1) upholding the restriction of a procurement to a single source under the "urgency," rather than the "sole source," exception to the requirement for the use of competitive procedures; (2) stating that the procurement laws and regulations are not "strictly" applicable to a reprocurement for the account of a defaulted contractor; and (3) concluding that Tecom had not demonstrated that it could successfully perform this contract, when Tecom has now located UB's gold-plating subcontractor, a circumstance which Tecom thinks we did not adequately consider in arriving at our decision. We discuss each of these contentions in turn below and for the reasons stated conclude that they provide no basis for reconsidering our prior decision.

As we indicated above, Tecom has argued that we erred in accepting the Navy's position that urgent circumstances justified the sole source award to UB. According to Tecom, the proposed sole source award to UB can only be justified under 10 U.S.C. § 2304(c)(1) (1988), which authorizes use of other than competitive procedures when the items needed are available from only one responsible source or a limited number of such sources and no other type of product will satisfy the agency's needs. Tecom maintains that the Navy's failure to invoke this exception prior to soliciting UB is a violation of statute and regulation. In this regard, Tecom also challenges our statement that the procurement statutes and regulations are not "strictly" applicable to reprocurement acquisitions, arguing that "laws either apply or they do not."

We reject these arguments. First, with respect to the argument that "laws either apply or they do not," we need merely state that this issue of strict applicability of procurement statutes and regulations was previously raised

by the protester and considered by this Office in resolving the protest. Nevertheless, we reiterate that where, as here, reprocurement is against the account of a defaulted contractor, procurement statutes and regulations governing regular procurements are not strictly construed; this position is consistent with and embodied in Federal Acquisition Regulation (FAR) § 49.402-6(a) and (b) (FAC 84-5), which provide discretionary authority to contracting officers to use any terms and acquisition method deemed appropriate for the repurchase provided that competition is obtained to the maximum extent practicable and the repurchase is at as reasonable a price as practicable. See United States Pollution Control, Inc., B-225372, Jan. 29, 1987, 87-1 CPD ¶ 96 at 4. Thus, to the extent Tecom argues that our decision is tantamount to a finding that "sloppy and incomplete work on the part of procurement officials" in reprocurement actions is either acceptable or reasonable, our decision on this protest and our decisional law on this issue clearly indicate otherwise. See Joseph L. De Clerk & Assocs., Inc., 68 Comp. Gen. 183 (1989), 89-1 CPD ¶ 47; DCX, Inc., B-232692, Jan. 23, 1989, 89-1 CPD ¶ 55. The fact that the protester disagrees with our conclusion does not constitute a showing that "with respect to certain classes of protesters" this Office fails to consider the reasonableness or propriety of reprocurement actions.

Next, we consider Tecom's allegations that the only justification for the proposed sole source, 10 U.S.C. § 2304(c)(1), was not invoked by the Navy and that we erred as a matter of law in accepting the agency's determination pursuant to 10 U.S.C. § 2304(c)(2) that urgency was a proper justification for the proposed sole source. According to Tecom, neither 10 U.S.C. § 2304(c)(2) nor FAR § 6.302-2 permits limiting the number of sources to a single source.

We find no merit to the protester's contentions. An agency may use other than competitive procedures to procure goods or services where the agency's requirements are of such an unusual and compelling urgency that the government would be seriously injured if the agency was not permitted to limit the number of sources from which it seeks bids or proposals. 10 U.S.C. § 2304(c)(2). This authority is limited by the requirement of 10 U.S.C. § 2304(e) that agencies seek offers from as many potential sources as is practicable under the circumstances. An agency, however, has the authority under 10 U.S.C. § 2304(c)(2) to limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. See Support Sys. Assocs., Inc., B-232473, et al., Jan. 5, 1989, 89-1 CPD ¶ 11 at 8. We will object to the agency's determination to limit competition

based on unusual or compelling urgency only where we find that the agency's decision lacks a reasonable basis. Id.

Although Tecom disputed the Navy's claim of urgency on both procedural and substantive grounds in its original protest, we found no basis to object to the urgency determination on either basis.

Finally, Tecom again argues that the restriction of the procurement to UB was improper because Tecom now can successfully produce the antennas since by obtaining a firm commitment from a new plating source--UB's plating subcontractor--Tecom has demonstrated its capability to perform. It is the protester's contention that although it had not achieved a repeatable plating process up to and through the filing of its protest with our Office, that fact is no longer significant in view of these later developments, which it thinks we did not adequately consider in our resolution of its protest because they were not brought forward until the conclusion of the protest process.

These arguments lack merit. In our initial decision we clearly considered the entire record with respect to the issue of the Navy's restriction of a potential source. Tecom's repetition of these allegations shows that it simply disagrees with the conclusion in our prior decision. Mere disagreement or reiteration of previously-rejected positions does not provide a basis for reconsideration. Joseph L. De Clerk & Assocs., Inc.--Request for Reconsideration, B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357.

The request for reconsideration is denied.

Ronald Berger
for James F. Hinchman
General Counsel