



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comprehensive Health Services, Inc.--Request
for Reconsideration

File: B-236266.5

Date: April 10, 1990

Michael E. Snyder, Esq., D'Agostino & Associates, P.C., for the protester.
Jonathan S. Baker, Esq., Shaw, Pittman, Potts & Trowbridge, for Orkand Corporation, an interested party.
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but mainly restates facts and legal arguments previously considered by the General Accounting Office.

DECISION

Comprehensive Health Services, Inc. (CHS), requests that we reconsider our decision, John Short & Assocs., Inc.; Comprehensive Health Servs., Inc., B-236266; B-236266.4, Nov. 9, 1989, 89-2 CPD ¶ 448, in which we denied CHS' protest that the low bid and second low bid received under invitation for bids (IFB) No. F05611-89-B-0206, issued by the Department of the Air Force for medical examinations and related supplies and services, should have been rejected as nonresponsive.^{1/} We deny the request for reconsideration.

The IFB, which was issued May 26, 1989, contemplated a fixed-price requirements type contract for medical examinations for U.S. Service Academy and Reserve Officer

^{1/} Since we found in our initial decision that the agency reasonably determined the low bidder responsive and responsible, we did not need to review the merits of the protester's responsiveness challenge to the bid of the second-low bidder. We remain of this view here.

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Training Corps (ROTC) scholarship applicants at approximately 290 locations nationwide. The IFB stated that offers would only be considered from responsible organizations or individuals currently or recently engaged in the performance of medical examination contracts "comparable to those described in this solicitation."

In its protest, CHS, the third-low bidder under the IFB, contended that the low bid submitted by Orkand Corporation should have been rejected as nonresponsive for not indicating that Orkand had the requisite current or recent experience in the performance of medical examination contracts. The protester basically argued that Orkand lacked the necessary experience since Orkand stated in its bid that its primary business is "Consulting, ADP Support Services, Data Collections and Operation Support," and since the bid indicated the firm is an "other corporate entity" rather than a "[c]orporation providing medical and health care service." CHS also contended that Orkand's bid should have been rejected as nonresponsive for indicating in the solicitation's place of performance clause (i.e., Federal Acquisition Regulation § 52.214-14 (FAC 84-40)) that Orkand will perform the contract at 1 location, without expressly indicating that it would perform medical examinations at the 290 medical examination locations to be serviced under the contract.

In our decision, we found that the protester's allegations concerning Orkand's bid, regarding a prospective contractor's experience and the place of performance clause, were matters which related to a bidder's responsibility, rather than responsiveness, which could be satisfied at any time prior to award. See Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297; Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 CPD ¶ 230. Regarding Orkand's experience, we specifically noted that the IFB's requirement for comparable medical examination experience established a definitive responsibility criterion, and that information obtained at the pre-award survey (including descriptions of 11 past and present medical service contracts and the credentials of Orkand's key personnel) reasonably supported the contracting officer's affirmative determination of responsibility of the firm. We also found that the contracting officer reasonably determined that Orkand met the terms of the IFB, despite listing only 1 location in its bid's place of performance clause, since Orkand explained that it would centrally administer the medical examinations from the location listed, its corporate headquarters. Since Orkand had contacted about 500 medical examiners and had obtained letters of intent from the examiners nationwide, we found reasonable the contracting officer's

determination of Orkand's intent and capability to comply with the solicitation's multiple location requirement, especially since Orkand took no exception to the IFB's instructions that the government will ultimately determine the required locations for its testing centers.

In its request for reconsideration, CHS again argues that Orkand did not meet the experience requirements and that the issue concerning Orkand's completion of the place of performance clause should have been considered a matter of responsiveness, not bidder responsibility.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1989). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.--Request for Reconsideration, B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

First, regarding the allegation concerning Orkand's experience, CHS now contends, based upon information it apparently recently obtained from some of the physicians contacted by Orkand, that Orkand has requested physician services at below market rates, and that therefore Orkand evidently lacks a proper understanding of the IFB's requirements. We find, however, that this allegation does not provide convincing evidence, as CHS suggests, of Orkand's alleged inexperience. On the contrary, it is equally plausible that Orkand is simply seeking the most competitive prices available, as evidenced by the fact that Orkand had previously obtained adequate commitments from a large number of medical examiners nationwide. We note also that CHS does not present any evidence to refute the contracting officer's findings, based on the pre-award survey, that Orkand displayed a thorough understanding of the technical requirements, that Orkand's key personnel had substantial experience, and that the firm possessed sufficient comparable medical examination experience.

Second, regarding place of performance, although CHS now acknowledges that this is typically a responsibility matter, the protester contends that this case is similar to one of those rare instances where the General Accounting Office has considered it a matter of responsiveness, as where the government has a material need for performance at a certain location, rendering the solicitation's designated place of performance inflexible. See, e.g., R.D. Sweeney, 53 Comp. Gen. 102 (1973). In Sweeney, our Office found that the

agency properly rejected a bid taking exception to a Navy home port requirement and indicating a place of performance 100 miles from San Diego where the solicitation specifically required that ship repair work be performed in the San Diego area in order to comply with the Navy's home port policy.

Our review of the record here, including the solicitation's requirements, does not indicate that this case is one of the rare instances CHS refers to since the agency under this solicitation has not established inflexible performance locations. Under the express terms of the IFB, the 290 listed locations were only initial testing centers proposed by the agency, with the government to ultimately designate the actual locations required under the contract. The IFB provided additional flexibility of location in that contractors were also allowed to substitute locations at anytime with the approval of the agency. In fact, the record shows that bidders were not obliged to submit a complete list of proposed locations until after bid opening. Thus, we find that the place of performance clause in the IFB here was for informational purposes and related to a matter of bidder responsibility, since a bidder was not precluded from changing its place of performance after bid opening in order to enhance its ability to perform the contract properly. See Delta Concepts, Inc., 67 Comp. Gen. 522 (1988), 88-2 CPD ¶ 43.

The request for reconsideration is denied.



for James F. Hinchman
General Counsel