Comptroller General
of the United States

Washington, D.C. 20548

Schatz

Decision

Matter of: The Department of Labor--Request for Reconsideration

File: B-237434.2

Date: May 22, 1990

Thomas K. Delaney, Esq., Office of Procurement Services, Department of Labor, for the agency.
Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision finding that procuring court reporting services for interim period under an existing contract constituted improper sole-source award--because new services were not within the scope of the contract as originally awarded and agency was aware incumbent contractor for services was interested in competing--is affirmed where reconsideration is based on arguments that could have been, but were not raised during consideration of protest, and record does not otherwise show error of fact or law warranting reversal or modification of decision.

DECISION

The Department of Labor (DOL) requests reconsideration of our decision Neal R. Gross & Co., Inc., B-237434, Feb. 23, 1990, 90-1 CPD ¶ 212, wherein we sustained Gross's protest against the award of an interim contract for court reporting services to the Heritage Court Reporting Company.

We affirm our decision.

Although advised by Gross that it was interested in competing for and performing any future DOL or Office of Safety and Health Administration (OSHA) reporting services contracts, the contracting officer instead procured new OSHA services for an interim period under an existing contract with Heritage for transcribing hearings and pretrial conferences by DOL administrative law judges

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(ALJ), and never solicited an offer from Gross. We sustained Gross's protest, holding that procuring the OSHA reporting services under Heritage's contract constituted an improper sole-source award, because (1) the new services were beyond the scope of Heritage's contract with DOL; (2) limited competition was not justified; and (3) even if limited competition had been justified, as a general matter, Gross, an incumbent contractor who had expressed interest in competing, should have been solicited. With respect to the nature of the services, we specifically found that the OSHA services to be added to Heritage's existing contract were significantly different from the original services under that contract. As noted in our decision, Gross informed us that the freedom of participants at OSHA advisory committee meetings to interject comments at any time, the technical character of the discussions and the requirement for delivery within 1 to 3 days, rendered transcribing the hearings much more difficult than transcribing the more formal, less technical, 20-day delivery workmen's compensation hearings before ALJs that were the focus of Heritage's existing contract.

In its request for reconsideration, DOL primarily argues that since the OSHA hearings were held before an ALJ and Heritage's existing contract encompassed hearings before ALJs, the interim OSHA services were within the overall scope of Heritage's existing contract. Further, DOL maintains that the requirement for the OSHA services was insignificant, with only $12,792 billed. DOL takes the further position that the delivery requirement differences were insignificant since the 1- to 3-day delivery requirement was only for administrative expediency.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our decision was founded on errors of either fact or law, or specify information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1989). Our Regulations do not permit a piecemeal presentation of evidence, information or analyses, since a piecemeal presentation could disrupt the procurement process indefinitely; accordingly, where a party raises in its reconsideration request an argument that it could have, but did not, raise at the time of the protest, the argument does not provide a basis for reconsideration. See FAA Seattle Venture, Ltd.--Request for Recon., B-234998.4, Oct. 12, 1989, 89-2 CPD ¶ 342; Department of the Navy--Request for Recon., B-220991.2, Dec. 30, 1985, 85-2 CPD ¶ 728.

In its report on the protest, DOL did not respond to the protester's original argument that the interim services

were not within the scope of Heritage's contract; DOL neither refuted Gross's detailed characterization of the differences between the services--other than stating, generally, that the OSHA services were within the scope of Heritage's contract--nor provided its own detailed descriptions of the new and existing services. Clearly, DOL could have raised its specific arguments with respect to the nature of the services at the time of the protest but did not do so. DOL's delay in this regard undermines the goal of our bid protest forum to produce decisions based on fully developed records. Department of the Navy--Request for Recon., B-220991.2, supra. This argument thus is not a basis for reconsidering the protest.

In any event, DOL's position is unpersuasive. Although Heritage's contract generally provided for transcribing all types of hearings conducted by DOL ALJs, the contract specified that the majority of the work would be the transcription of workmen's compensation hearings. In fact, Heritage was not transcribing OSHA hearings under the contract, and these services instead were procured under a separate contract, awarded on the basis of a different statement of work than is included under Heritage's contract concerning workmen's compensation hearings. As we indicated in our decision, this suggests that the agency itself previously has viewed the services as separable and essentially different in nature. Accordingly, it appears to us that it was never contemplated at the time of the competition resulting in Heritage's contract that OSHA hearings would be conducted under Heritage's contract as of the beginning of fiscal year 1990.

Further, DOL still has not challenged Gross's characterization of the specific differences between the interim OSHA hearings and the workmen's compensation hearings that were to constitute the majority of work under Heritage's contract; the fact that both types of hearings are held before an ALJ does not refute our finding that the freedom of participants to comment during the informal OSHA hearings and the more technical character of the discussions renders the OSHA hearings more difficult to transcribe, more costly, and thus materially different from the workmen's compensation hearings. Further, while the shorter delivery requirement for the OSHA transcripts may only have been a matter of expedience for the agency, it nevertheless imposed a greater burden than did the more lenient 20-day delivery requirement under Hertiage's contract.

As the OSHA services were outside the scope of Heritage's contract, it is irrelevant that a limited quantity of the services were procured; DOL was aware of Gross's interest in

competing and therefore was required to solicit that firm's offer. See California Properties, Inc., 68 Comp. Gen. 146 (1988), 88-2 CPD ¶ 581.

Our decision is affirmed.

for Comptroller General
of the United States