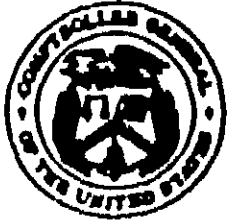


McAuliffe
14572-C



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Department of Housing and Urban Development--
Reconsideration

File: B-243142..1

Date: September 18, 1991

Garry W. Johnson, Esq., Tripp, Scott, Conklin & Smith, for the protester.
Deborah D. Wellborn, Esq., Department of Housing and Urban Development, for the agency.
Susan K. McAuliffe, 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 agency merely expresses disagreement with our finding that the awardee's proposal did not comply with the solicitation's required attorney services since, despite agency's claim that it did not intend to require such services, the agency has not shown that our decision was based on other than a clear and reasonable reading of the solicitation's terms or that an error of fact or law exists which warrants reconsideration of the decision.

DECISION

The Department of Housing and Urban Development (HUD) requests reconsideration of our decision in Tripp, Scott, Conklin & Smith, B-243142, July 9, 1991, 91-2 CPD ¶ ____, in which we sustained the protester's challenge of the award of a contract to First American Title Company under request for proposals (RFP) No. 7-91-069, issued by HUD for real estate closing services for properties owned by HUD in central Florida.^{1/} We sustained the protest on the ground that the awardee's proposal failed to satisfy the RFP requirement that offerors provide certain services by a duly licensed attorney.

We deny the agency's request for reconsideration.

^{1/} First American Title Company has submitted comments in support of HUD's reconsideration request.

The RFP originally was issued on October 3, 1990, but was canceled after all offers received were found to be deficient. The current RFP, which was issued on December 4, was a resolicitation of the services that had been included in the canceled RFP. The work statement section of the RFP required that the contractor perform, among other things, the following services: (1) upon HUD's acquisition of properties, review title policy and recorded special warranty deed to ensure that both are clear for title approval; (2) conduct a title rundown, beginning with the date the property was deeded to HUD, and clear all routine issues that arise during this time period such as past due taxes, water bills, demolition liens, and association liens, in sufficient time to prevent delays in closing; (3) prepare deeds; (4) explain all closing papers and documents to purchaser; and (5) physically represent HUD at closings which are conducted by third party closers. Award was to be made to the responsible offeror whose offer was most advantageous to the government, cost/price and other factors considered.

Due to the concerns expressed by potential contractors regarding the terms of the canceled RFP, namely, that under Florida law, attorney services were required to perform certain aspects of the RFP's title review requirements, the agency provided a cover letter with the current RFP to better explain its requirements. That letter explained that several potential offerors had "brought to our attention the fact that Florida state law states that a title company can render an opinion of title only when issuing title insurance." This letter, sent to all prospective offerors as part of the solicitation package, instructed that:

"The title company may be required to perform closing services, including the title review; if the purchaser then decides not to purchase title insurance, the title company is in violation of state statute. We felt that a reasonable alternative was for the title company to use an attorney to do the title review, thus obviating any violation of state statute."

The letter stated that, as a result, the work statement provisions concerning title review and approval should be considered "optional" since competitive range determinations would be based on the performance of "all services excluding title review." After the competitive range was established, offers were to receive supplemental points for performing the required title review. (As we stated in our prior decision, although the RFP labeled these services as optional, it is clear that the RFP contemplated an award to include these essential services. The agency does not contest the fact that

the title review services are a firm performance requirement under the RFP.) Section M of the RFP required offerors to demonstrate adequate compliance with the Florida law that a title company must issue title insurance in order to be able to issue an opinion of title. Offerors were advised that under such law, a title company's issuance of an opinion of title without issuing title insurance would constitute an unauthorized practice of law.

HUD received five offers in response to the RFP by the closing date for the receipt of proposals. Of the four offerors in the competitive range, three proposed the use of attorneys to perform the RFP's title review services in order to comply with the solicitation's terms regarding title review practices under Florida law. The awardee, however, did not propose the use of attorneys for title review services (which, consequently, resulted in the awardee offering the lowest proposed cost), and instead stated in its proposal that:

"We have reviewed the title review requirements and a sample of the title review approval We do not feel that your review requirements, or the completion of the title review form, without the issuance of the insurance would constitute the unauthorized practice of law."

We sustained the protester's challenge to the agency's award on the basis that in accepting First American's proposal, (which explicitly states that it will not use attorneys to perform the title review and approval requirements of the contract), HUD improperly relaxed a material solicitation requirement for the awardee without affording the other offerors an opportunity to respond to the revised requirement.

In its reconsideration request, the agency expresses disagreement with our sustain decision primarily because the agency allegedly never intended for the RFP to require attorney services for title reviews. HUD also states that it never intended to express an opinion as to whether Florida law in fact requires an attorney to perform certain title review services required under the RFP. HUD contends that since the RFP was not intended to include a requirement for attorney title review services, our decision that the awardee's proposal took exception to a material solicitation requirement is incorrect and the award to First American is proper.

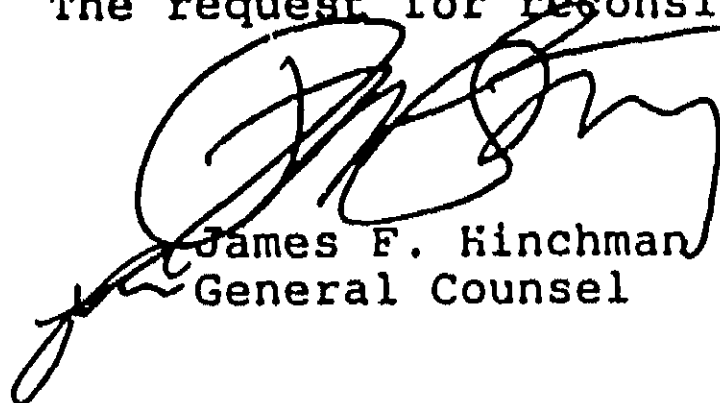
Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either errors of fact or law, or present information not previously considered, which warrant reconsideration of the decision. 4 C.F.R. § 21.12(a) (1991). The party's mere

disagreement with our decision does not meet this standard, See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

We have again reviewed the terms of the RFP regarding title review services and conclude that despite the agency's position that it did not intend to instruct offerors that the use of an attorney was required under the RFP for these services, the solicitation clearly required that offerors do so. Regardless of the agency's position that it did not intend its requirements in the way interpreted by our Office and the four other offerors, we believe the solicitation document speaks for itself. The RFP required all offerors to show compliance with the agency's view of Florida law contained in the solicitation's instructions and the cover letter. That cover letter informed offerors that the failure to provide an attorney for the title review services, where the purchaser decides not to purchase title insurance, would result in a violation of state statute. By the agency's own instructions, as an alternative to such violation, the title company was to use an attorney to do the title review. Although the agency's request for reconsideration expresses disagreement with our view of what the RFP required, we cannot find that HUD has furnished any information to show an error of fact or law regarding the stated RFP terms to warrant reconsideration of our decision.

To the extent the agency now asserts that its intent was not to require an attorney to perform title review, this intent was not reflected in the RFP. Four of five offerors (another offer which did not propose an attorney was late) submitted offers which proposed an attorney for these services consistent with the RFP's terms. It appears that these offerors were misled by the RFP as to HUD's intent. In these circumstances, if the RFP did not reflect the agency's minimum needs, HUD should have amended the solicitation. See American Cyanamid Co., B-232200.2, June 23, 1989, 89-1 CPD ¶ 593.

The request for reconsideration is denied.



James F. Hinchman
General Counsel