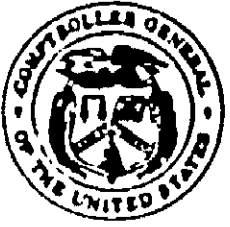


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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Wackenhut Services, Inc.--Reconsideration

File: B-246536.4

Date: August 31, 1992

Richard J. Webber, Esq., Arent, Fox, Kintner, Plotkin & Kahn, for the protester.
Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requesting party fails to show legal or factual error or present information not previously considered that warrants reversal or modification of prior decision.

DECISION

Wackenhut Services, Inc. (WSI) requests reconsideration of our decision, Essex Corp., B-246536.3, June 25, 1992, 92-2 CPD ¶ ____, in which we sustained Essex's protest against the Department of Energy's (DOE) award of a contract to WSI under request for proposals (RFP) No. DE-RP04-91AL72307. The RFP sought proposals to operate DOE's Transportation Safeguards Training Center in Albuquerque, New Mexico. We found that WSI's proposal failed to comply with the RFP requirement that offerors submit letters of intent for personnel proposed to fill certain key positions. We recommended that DOE reevaluate the proposals and award a contract on the basis of the proposal that complied with the RFP requirements and was most advantageous to the government as measured by the RFP's evaluation criteria.

WSI participated in Essex's protest as an interested party. In its request for reconsideration, WSI asserts that the RFP did not require offerors to submit letters of intent; that our recommendation is inequitable since it precludes WSI from competing for the contract; and that Essex's protest should have been dismissed as untimely.

We deny the request for reconsideration.

The RFP was issued on March 11, 1991, and required submission of initial proposals by April 19. The solicitation contemplated award of a contract under which the contractor would, among other things, provide personnel to operate DOE's Transportation Safeguards Training Center in Albuquerque, New Mexico.

The RFP identified several key positions and required each offeror to submit letters of intent for the personnel proposed to fill those positions. Specifically, section L.03(b)(2)(ii) of the RFP stated:

"Personnel. The Offeror shall substantiate the experience, formal and informal training, and demonstrated performance of the proposed Instructor and Key Management Personnel which will perform key functions by furnishing resumes, . . . In addition, provide Letters of Intent for those Instructor and Key Management Personnel who have provided written assurance that they would accept employment with the Offeror's firm if they are currently employed with another firm."

In its initial proposal, WSI stated that it intended to perform the contract by hiring Essex's incumbent personnel; however, WSI submitted no letters of intent for any Essex personnel.¹ Consistent with WSI's inability to attract Essex personnel, WSI's initial proposal listed several "alternate candidates" for each of the key positions; however, WSI submitted no letters of intent for any of these "alternate candidates."

By letter dated June 5, the agency provided written discussion questions to WSI, one of which stated:

"What assurances can you provide that the personnel proposed in your proposal dated April 19, 1991, are still available and will be committed to working on the proposed contract. If any of these proposed personnel are no longer available to work on this contract, please provide the information requested in the RFP for those personnel you plan to substitute. Also, for any proposed personnel for which written assurances were not provided in your proposal, please provide letters of intent for such personnel." (Emphasis added.)

¹WSI's initial proposal noted that although WSI had placed an advertisement seeking applicants, it had received no responses from any Essex personnel.

On June 14, the agency conducted oral discussions with WSI. The record contains the contracting officer's handwritten notes of this meeting, as well as a document she subsequently prepared for counsel, each of which specifically state that during oral discussions DOE personnel "stressed [the] necessity" of letters of intent for the key personnel proposed by WSI.

Despite the language of the RFP, the June 5 letter, and the June 14 oral discussions, WSI's final proposal included letters of intent for only two of the more than 25 people listed in its proposal as "candidates" for the key positions.² Nonetheless, WSI was selected for contract award.

In sustaining Essex's protest, we noted that, in negotiated procurements, a proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and a contract award based on such an unacceptable proposal violates the procurement statutes and regulations. See, e.g., Stocker & Yale, Inc., 70 Comp. Gen. 490 (1991), 91-1 CPD ¶ 460; Eklund Infrared, 69 Comp. Gen. 354 (1990), 90-1 CPD ¶ 328. Since, despite DOE's clear request during discussions that: "for any proposed personnel for which written assurances were not provided in your proposal, please provide letters of intent for such personnel," WSI chose not to comply with the requirement, we held that WSI's final revised proposal should have been rejected for failing to comply with a material solicitation requirement. See Stocker & Yale, Inc., supra; Eklund Infrared, supra.

In seeking reconsideration, WSI challenges our conclusion that the RFP required offerors to submit letters of intent, arguing, as it did during the protest, that the RFP should have been interpreted as requiring letters of intent only if such letters had, in fact, been provided to the offeror by the key personnel proposed.

As we noted in our decision, provisions requiring submission of letters of intent are included in RFPs in order to provide agencies with assurances that the key personnel proposed by offerors are, in fact, intending to work for the offeror proposing them. Here, the agency consistently

²WSI's proposal failed to specifically identify the individuals it was proposing to fill the various key positions, instead, listing multiple "candidates" for each position. In effect, WSI's proposal advised DOE that WSI intended to wait until after proposals had been evaluated and a contract awarded to specifically identify which key personnel it intended to use on the contract.

interpreted the provision in what we believe is the only reasonable manner--that is, as requiring letters of intent for all key personnel proposed--and the record is clear that this interpretation was conveyed to WSI. WSI's proposed interpretation would render the provision meaningless, since it would provide offerors complete discretion as to whether to provide the assurances sought.

WSI's reconsideration request challenges our conclusion that the agency conveyed its interpretation of the RFP to WSI during discussion, arguing, as it did during the protest, that WSI left oral discussions believing that it need not submit any letters of intent. WSI suggests, without any credible support, that the contracting officer's notes regarding the June 14 discussions stating, "SEB stressed necessity for Letters of Intent," may have been "falsified," and requests that they be disregarded.

WSI's reconsideration request provides no basis for reversing or modifying our decision regarding the RFP requirements and the agency's discussion of those requirements with WSI. At the bid protest hearing, the contracting officer was specifically confronted with her written statement that DOE had "stressed the necessity of letters of intent" during oral discussions; she confirmed her belief that this was accurate. Video Transcript (VT) at 11:24-25; 12:17-19. Further, even without the contracting officer's notes and testimony, the record is clear that during discussions the agency unambiguously brought the RFP requirement regarding letters of intent to WSI's attention and that WSI understood that requirement.

As quoted above, the June 5 letter contained written discussion questions focusing on WSI's failure to submit letters of intent in its initial proposal, and specifically requested that WSI submit such letters in its final revised proposal. In this regard, WSI's president acknowledged his understanding of the June 5 letter, stating in a sworn affidavit:

"After submission of our initial proposal, WSI received written questions from DOE in anticipation of the oral negotiations. One of those questions requested letters of intent for proposed key personnel for whom written assurances were not provided in WSI's proposal. WSI could not comply with that request without changing its approach to key personnel by eliminating any reliance on the incumbent's personnel." (Emphasis added.)

At the protest hearing, WSI's president further acknowledged that the agency and WSI "spent twice as much time" during oral discussions discussing DOE's written request that WSI submit letters of intent as they spent discussing all of the other questions combined, VT at 15:12, and that DOE personnel made no statements purporting to curtail or rescind the requirement, VT at 15:09-10. Following discussions, the RFP was not amended in any way.

Accordingly, contrary to WSI's assertion, it is clear that the agency meaningfully discussed the RFP requirement of letters of intent with WSI, that WSI fully understood that requirement, and that WSI's final proposal failed to meet that requirement.

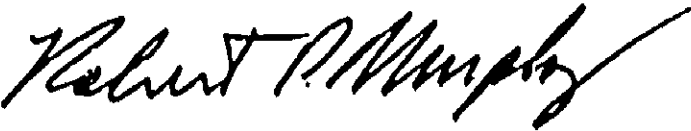
Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either factual or legal errors, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1992). The repetition of arguments made during our consideration of the original protest or mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Here, WSI has not presented new information nor has it identified any legal or factual errors regarding our decision that the RFP required offerors to submit letters of intent and that the agency meaningfully discussed WSI's failure to meet that requirement. Accordingly, we have no basis to reverse or modify our decision.

WSI also requests reconsideration of our recommendation that the agency reevaluate the previously submitted proposals and award a contract on the basis of the proposal that complies with the RFP requirements and is most advantageous to the government as measured by the RFP's evaluation criteria. WSI asserts that our recommendation is inequitable since it precludes WSI from further competing in the procurement, but WSI identifies no legal or factual error and presents no new information regarding our recommendation; accordingly, WSI's request provides no basis for us to reconsider our recommendation.

Finally, WSI asserts that our Office should have dismissed Essex's protest as untimely on the basis that Essex knew of its protest grounds more than 10 days prior to the date it was filed. Specifically, WSI refers to the fact that an Essex employee viewed a portion of WSI's proposal on October 7, 1991, and that WSI's initial protest was not filed until more than 10 days thereafter.

The record indicates that, on or about October 7, an Essex employee viewed a portion of WSI's initial proposal.³ However, prior to that time, DOE had advised Essex that the approach taken by WSI in its final proposal regarding key personnel was substantially different from the approach WSI had taken in its initial proposal. Thus, review of WSI's initial proposal did not provide Essex with any meaningful information regarding the proposal on which award was based and, by itself, provided no basis for protest. Accordingly, there are no grounds to dismiss Essex's protest as having been filed more than 10 days after Essex's employee viewed WSI's initial proposal.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel

³This incident occurred after the agency had selected WSI for award, and after the agency had formally notified Essex of WSI's selection.