



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Tucson Mobilephone, Inc.--Reconsideration

**File:** B-250389.2

**Date:** June 21, 1993

Theodore M. Bailey, Esq., Law Office of Ronald J. Shaw, for the protester.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration is denied where protester does not allege errors of fact or law, or provide information not previously considered, which would warrant reversal or modification of earlier decision.

### DECISION

Tucson Mobilephone, Inc. requests reconsideration of our decision Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79, in which we denied Tucson's protest against the terms of invitation for bids (IFB) No. F04700-92-B-0027, issued by the Department of the Air Force to obtain installation, removal, maintenance and repair services for various land mobile radio systems at Edwards Air Force Base. Tucson takes issue with various aspects of our original decision, and also presents new arguments and evidence which it maintains show that our decision was erroneous.

We deny the request.

In its original protest, Tucson argued that various portions of the IFB were either unduly restrictive or impermissibly vague. Specifically, Tucson argued that certain IFB qualification requirements for contractor personnel were unduly restrictive; Tucson was primarily concerned with the educational and experience requirements of the solicitation, and also objected to a provision relating to the physical demands which may be placed on contractor personnel during emergency repairs. In addition, Tucson maintained that various portions of the solicitation were impermissibly vague, including one requirement for the contractor to provide troubleshooting assistance on telephone lines, and the structure of the bid schedule.

We denied all of Tucson's allegations, concluding that the portions of the IFB which the protester had argued were unduly restrictive were reasonably related to the Air Force's minimum needs, and that the allegedly ambiguous portions of the solicitation were sufficiently specific to enable bidders to intelligently calculate their bids on an equal basis. In its reconsideration, Tucson takes issue with these conclusions insofar as they relate to certain issues.

#### EDUCATIONAL REQUIREMENTS

Tucson argues that the IFB's educational requirements are unduly restrictive because, contrary to the agency's position during our consideration of the protest, the original equipment manufacturer (OEM) warranties do not require that the equipment in question be serviced by an OEM-trained technician. Tucson's letter requesting reconsideration states that it includes two exhibits to support this argument (a copy of the OEM's warranty under a General Services Administration contract and an invoice showing the sale of OEM parts to Tucson under another contract). Tucson concludes that our decision was erroneous in holding that the OEM training requirement was reasonable.

In considering this argument in our prior decision, we stated then that we were satisfied by the agency's explanation that the requirements were necessary to ensure that the OEM warranties for the subject equipment remained in force. Tucson's argument here is no more than a reiteration of its prior argument with citation to two exhibits. In an apparent oversight, Tucson's reconsideration request did not contain the exhibits. Even if Tucson had furnished these materials, they would not provide a basis for reconsidering our decision. Where a party raises an argument or presents evidence in a request for reconsideration that could have been, but was not, raised during the original protest, the argument (or evidence) does not provide a basis for reconsideration. Moore Heating & Plumbing, Inc.--Recon., B-246740.2, July 22, 1992, 92-2 CPD ¶ 37. Since we never received the exhibits, and since it is not otherwise apparent and Tucson has not explained why the argument (and

evidence) were not presented during consideration of the original protest, we have no basis to reconsider this aspect of Tucson's protest.<sup>1</sup>

#### EXPERIENCE AND ON-SITE EMPLOYEE REQUIREMENTS

Tucson also challenges our decision regarding the IFB's experience and on-site employee requirements. These requirements called for the contractor's on-site employees to have between 3 and 5 years of experience working on certain complex specialized equipment. They related primarily to communications nets employed by vital elements at the base such as the commander's office, fire and hospital units, and those responsible for water supply monitoring. We found these provisions unobjectionable because they are related to human safety or national defense, and we noted that the agency had the discretion to set its minimum needs so as to achieve the highest possible reliability and effectiveness. We also found that the IFB's requirement that employees meeting the experience criteria be available on-site was an unobjectionable means for the Air Force to ensure timely repairs and to minimize the downtime of various critical communications nets.

In its reconsideration, Tucson takes issue with our conclusion that the criticality of the communications nets being serviced provided a reasonable basis for the agency's experience and on-site employee requirements. Tucson contends that other military bases have critical communications nets, but do not impose these requirements. Tucson also continues to maintain that it can meet the agency's requirements with a combination of on-site employees and off-site depot support.

Tucson does not specify errors of fact or law in our decision, and has not presented any new information showing that our original conclusions regarding this issue were

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<sup>1</sup>In a supplemental letter to our Office submitted more than a month after Tucson filed its reconsideration request, the protester offered "recently discovered" additional information (such as copies of Air Force policy guidelines, various licenses of its technicians, and copies of other government contracts) which it maintains shows that Air Force policy is to not require manufacturer-specific training, and also that Tucson is in fact capable of performing the required maintenance. There is no explanation of why this information could not have been obtained and provided during the initial protest, or at the time Tucson originally requested reconsideration. We therefore will not consider the supplemental information. Moore Heating & Plumbing, Inc.--Recon., supra.

erroneous. Rather, Tucson disagrees with our conclusion that the requirements are unobjectionable due to their relationship to the agency's needs. Such disagreement does not warrant reconsidering our decision. 4 C.F.R. § 21.12(a) (1993). Great Atlantic Boiler Servs., Inc.--Recon., B-244612.3, May 5, 1992, 92-1 CPD ¶ 417.

#### PHYSICAL DEMANDS FOR EMPLOYEES

Tucson also argues that we erred in denying its protest against the IFB's physical demand requirements for contractor employees. These requirements called for contractor personnel responding to emergency service calls, performing preventative maintenance inspections, and performing troubleshooting and repair functions to be physically capable of climbing antenna towers or poles, crossing rough terrains on foot, climbing steep hills, and carrying up to 50 pounds of equipment and supplies for distances of up to 1/2 mile. We did not address this aspect of Tucson's protest in the decision, stating that we had reviewed the allegation and found it meritless.

In its reconsideration, Tucson essentially reiterates its earlier allegations that this provision is unduly restrictive because it requires all of a contractor's personnel to be overqualified and violates the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12101 et seq. (Supp. III 1991). Tucson also alleges that, since the need for these physical capabilities arises only occasionally, it should not be required to have all of its personnel meet these capabilities.

We agree with the agency that the challenged requirements are necessary because of the unusual nature of the installation. Edwards Air Force Base is a remote desert installation spanning some 301,000 acres, and some equipment is located in areas which are inaccessible by ordinary vehicle; the contractor therefore must have personnel who can reach this equipment in order to service it. Further, these requirements are ameliorated somewhat by another provision of the IFB requiring the government to provide contractor personnel transportation to work sites which are inaccessible to standard vehicles. Tucson has not explained in either its protest or reconsideration how services will be performed at these remote locations without at least some of its employees being able to meet the IFB's physical requirements. Tucson also has not explained its views that (and it is not apparent why) this portion of the IFB is violative of the ADA. There is no basis for reconsidering this aspect of our decision.

## TROUBLESHOOTING NETWORKS USING TELEPHONE LINES

Tucson challenges our conclusion that the IFB's failure to provide for separate pricing of communications networks troubleshooting was unobjectionable. The IFB contains essentially two types of contract line item numbers (CLINs): services of a recurring nature to be paid for on a fixed monthly price basis, and services of a nonrecurring nature to be paid for on a cost-per-activity basis. According to Tucson, this service should have been listed as a separate CLIN for nonrecurring maintenance, to eliminate the possibility that the contractor will be required to perform some of this work without compensation.

Tucson's argument here is no more than a reiteration of an argument it previously raised. Again, the decision did not specifically discuss this argument, but stated that we considered it to be without merit. We concluded that the absence of specific pricing for this indefinite work was unobjectionable. The agency had explained that these services will be compensated under the CLIN which is applicable to the type of equipment involved, and that the agency will reimburse the contractor under either one of the recurring or nonrecurring maintenance CLINs, as appropriate. An IFB properly may require bidders to account for eventualities such as those involved here by adjusting their fixed prices; there is nothing inherently improper in such an approach, even though it imposes some degree of financial risk on offerors. See DGS Contract Servs., Inc., B-249845.2, Dec. 23, 1992, 92-2 CPD ¶ 435; Bean Dredging Corp., B-239952, Oct. 12, 1990, 90-2 CPD ¶ 286.

## CHANGES CLAUSE

In rejecting Tucson's original assertion that the IFB improperly failed to contain a comprehensive inventory of all equipment to be serviced (along with separate CLINs for each piece of equipment), we noted that the agency had properly decided to provide only equipment and workload estimates. The IFB contained a provision for equitable adjustments in the event that there was more than a 5-percent fluctuation in either the equipment quantities or workload. Tucson asserts in its reconsideration that this is a "cumbersome" way to handle changes in contract requirements, but does not establish that it is improper.

The request for reconsideration is denied.



James F. Hinchman  
General Counsel