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Matter of: American International Contractors (Special Projects), Inc.--Reconsideration

File: B-252859.2; B-253352.2

Date: December 14, 1993

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DIGEST

Request for reconsideration is denied where request fails to demonstrate that prior decision contained an error of fact or law which would warrant its reversal and repeats arguments previously considered by our Office in the original decision.

DECISION

American International Contractors (Special Projects), Inc. (AICSPI) requests that we reconsider our decision, American Int'l Contractors (Special Projects), Inc., B-252859; B-253352, July 29, 1993, 93-2 CPD ¶ 62, in which we denied AICSPI's protest against the Department of State's refusal to qualify that firm as eligible to compete for the design and construction of U.S. Embassy construction projects in Kuwait and Singapore.

We deny the reconsideration request.

The procurements at issue were subject to the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Security Act), 22 U.S.C. § 4852 (1988 and Supp. IV 1992), which provides that only "United States persons and qualified United States joint venture persons" are eligible to compete for a diplomatic construction project having an estimated total project value, as here, exceeding $10,000,000 and where adequate competition exists. The Act sets forth several criteria, each of which must be met, for an offeror to be considered a "United States person." In its protest, AICSPI contended that the agency misapplied the Security Act in determining that the firm was not a "United States person" within the meaning of that Act.

We concluded that the agency reasonably found that the protester had not "performed within the United States . . . services similar in complexity, type of construction, and value to the one being bid," as required by the Security Act, 22 U.S.C. § 4852(c)(2)(D). We therefore concluded that the agency did not abuse its discretion in determining that AICSPI's experience did not satisfy the criterion for qualifying as a "United States person" under the Act. Since compliance with every one of the criteria set forth in the Act was required, we did not address the agency's additional bases for concluding that the protester did not meet the Act's requirements.

The protester had argued in its original protest that in making the determination, the agency should have taken into consideration the qualifications of its parent corporation, American International Contractors, Inc. (AICI). The protester argued that it was unreasonable for the agency to require that it form a joint venture with its parent corporation in order for it to be permitted to rely on the experience of its parent.

We found the argument to be untimely and did not consider it. As stated in our decision, the prequalification application explicitly stated that "[o]rganizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related firms, must do so by way of a joint venture." (Emphasis added.) We noted also that the application provided that "an entity whose only construction work experience was performed by its legally distinct subsidiary or parent will not be considered to have construction experience." AICSPI did not challenge this language in the application, which in our view clearly stated the agency's position, until months after the firm had submitted its completed application in December 1992. We therefore dismissed this protest ground as untimely pursuant to 4 C.F.R. § 21.2(a)(2) (1993).

AICSPI argues that this ground was timely raised. AICSPI contends that, notwithstanding the language contained in the prequalification application, its "prior course of dealings" with the agency led it to believe that the agency would consider the experience of the parent corporation. In support of its position, it points out that it has in the past been prequalified by the agency where it had completed a prequalification application containing language similar to the one at issue here. Therefore, AICSPI argues that it was not required to challenge the agency's failure to consider the experience of AICI until 10 days after it learned, in late March 1993, that the agency would not consider AICI's experience in deciding whether to prequalify AICSPI.

We will reconsider a decision only where the requesting party either shows that our prior decision contained an error of fact or law, or presents new information not previously considered, which would warrant reversal or modification of the decision. 4 C.F.R. § 21.12(a); Camar Corp.--Recon., B-249250.2, Apr. 1, 1993, 93-1 CPD ¶ 282. AICSPI has not met this standard.

The record does not support the protester's assertion that the agency previously had a policy of considering the work experience of a prospective offeror's parent corporation in determining whether that offeror has performed services similar to those being sought. The agency explained in its administrative report that the Department of State "has no policy which allows a contractor to rely on the qualifications of its parents to qualify as a United States person under the Security Act."

The agency explained further that it has, "on a very limited number of occasions" in the past, allowed an "international division of a major U.S. construction company to rely on the U.S. business experience of its parent" with respect to the business volume criterion set forth in the Security Act. As the protester itself acknowledged, the Security Act distinguishes between business experience and business volume. While the protester may reasonably have expected that in limited circumstances the agency would consider the business volume of a parent corporation, there is no support in the record for its position that it could have reasonably expected that the agency would consider the nature of the parent's business experience in determining whether the offeror has performed similar projects.

Moreover, the fact that the agency prequalified AICSPI previously does not demonstrate that, in doing so, the agency relied on the parent's experience. We have reviewed the application submitted by AICSPI in a prior procurement; on the basis of that application, the agency prequalified the protester under the Security Act for three construction projects. In a 5-page section titled "PAST EXPERIENCE," the application described in detail 12 projects purporting to indicate the experience of AICSPI. For each of the 12 projects, AICSPI provided the names and locations of the projects, the owner's representative, architect, contract amount, and completion date. While a preface to the list also made reference to projects of AICI, it stated only that AICI had performed and was currently performing contracts for various government agencies. No specific information about AICI's experience was provided. In sum, the application identified only AICSPI projects--not AICI projects--as relevant similar experience which should be considered in assessing AICSPI's experience. While some of these projects

may actually have been those of the protester's parent,[1] we have no evidence that the agency knew this and based the prequalification on it. Thus, the protester has not shown that it reasonably could have expected that the agency would disregard the application's language by crediting AICSPI with its parent's experience. Accordingly, AICSPI's objection to the agency's treatment of that experience in this procurement was untimely.

In any event, as to the merits, the protester has not shown in either its protest or its reconsideration request that assessing offerors' experience in accordance with the language contained in the prequalification application was unreasonable or inconsistent with the Security Act. In our view, the agency's decision to limit its consideration of AICSPI's experience to that firm's experience for purposes of determining whether the firm was a "United States Person" under the Security Act was not an abuse of its discretion.

The remainder of the request for reconsideration merely repeats arguments previously made and considered in our resolution of the prior protest. For example, AICSPI argues that it has the requisite experience based on projects performed under a previous corporate name and that AICSPI has served as the general contractor for major construction projects in the United States. In reaching our decision on the original protest, our Office considered these arguments. AICSPI's repetition of arguments made during that protest or mere disagreement with our decision does not meet our standard for review of reconsideration requests. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.

James F. Hinchman
General Counsel

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[1]The protester's initial application for the Kuwait project listed only projects which, according to the application, were performed by AICSPI. When the agency questioned the protester about these projects, however, AICSPI conceded that 7 of the 10 projects listed as AICSPI projects were actually performed by AICI.