



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Keci Corporation--Reconsideration

File: B-255193.2

Date: May 25, 1994

August N. Kugler for the protester.

Aldo A. Benejam, Esq., and Ralph O. White, Esq., Office of the General Counsel GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration is denied where the protester does not show that prior decision dismissing its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

2. New and independent grounds of protest were properly dismissed as untimely where the later-raised issues did not independently satisfy the timeliness requirements of the General Accounting Office's Bid Protest Regulations; extension of time for filing comments on agency report does not waive the timeliness requirements for filing bid protests.

DECISION

Keci Corporation requests that we reconsider our decision dismissing its protest of the award of a subcontract to Reedy Associates, Inc. under request for quotations (RFQ) No. S-4203, issued by Kaiser Engineers Hanford Co., in its capacity as architect-engineer/construction manager for the Department of Energy (DOE) at DOE's Hanford, Washington site.¹ Keci argues that our prior decision erred in failing to recognize that even though an individual employed

¹The parties agreed to the resolution of this protest by our Office. We review subcontracts awarded by prime management and operating contractors under a "federal norm" standard, i.e., to determine whether they are consistent with the policy objectives set forth in statutes and regulations which apply directly to federal agency procurements.

by Reedy obtained the necessary license during the course of the protest, the contractor itself (i.e., Reedy) is not licensed as a corporation to perform engineering services in the state of Washington. Keci also argues that we should have considered its allegation that Reedy's quotation did not conform to the RFP.²

We deny the reconsideration request.

BACKGROUND

On July 16, 1993, Kaiser issued the RFQ for the services of a professional engineer to assist it with the development of design specifications for the multifunction waste tank facility at Hanford, as well as to perform analysis to ensure that the facility includes appropriate protection against overpressurization. These tanks must meet certain specialized and rigorous standards, set forth by the American Society of Mechanical Engineers (ASME), because the tanks will eventually contain high levels of radioactive waste.

The solicitation provided for award to the low conforming offeror, and requested that quotations be submitted by July 23, 1993. Paragraph 4.1 of the solicitation's statement of work required that a contractor meet certain requirements, including the three requirements below:

- (1) the contractor must be currently registered as a professional engineer in the United States;
- (2) the contractor must be able to be licensed as a professional engineer in the state of Washington within 45 calendar days of the notice to proceed; and
- (3) the contractor must be able to certify the ASME design specification and overpressure report.

On August 3, Kaiser advised the protester that it had selected Reedy Associates, Inc. of Los Gatos, California for award of the subcontract; on August 31, Kaiser made the award to Reedy. On October 1, Keci filed a protest in our Office.

In its initial protest, Keci contended that the agency had improperly awarded to a firm that did not meet the license and certification requirements in the statement of work.

²Keci does not request that we reconsider that aspect of our decision dismissing as untimely its allegation that the agency should not have issued the RFQ.

Keci also argued that the solicitation should not have been issued because Kaiser could have obtained the required services through a purchase order previously issued to Keci. In its comments on the agency report, Keci supplemented its protest arguing that Reedy's quotation did not conform to the terms of the RFQ.

We dismissed Keci's protest because the requirement that a contractor obtain an appropriate state license is generally a contract performance obligation and not a precondition to award reviewed by our Office. We also found that Keci's allegations that the RFQ should not have been issued and its supplemental protest that Reedy's quotation did not conform to the RFP, were untimely.

DISCUSSION

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 that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1993). The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Keci has simply failed to show that we erred in dismissing its protest.

As explained in our earlier decision, the requirement that a contractor obtain an appropriate state license is generally a contract performance obligation and not a precondition to award. White Water Assocs., Inc., B-244467, Oct. 22, 1991, 91-2 CPD ¶ 356. Actual compliance with such licensing requirements need only be met by the start of performance. Chemical Compounding Corp., B-227333, June 15, 1987, 87-1 CPD ¶ 596. Since the RFQ, as quoted above, requires only that offerors be able to procure a license within 45 days of the notice to proceed, and offerors were not required to obtain necessary licenses prior to award, the awardee's alleged lack of a state license was not a bar to contract award. Mid-America Mgmt. Servs., Inc., B-244103, June 5, 1991, 91-1 CPD ¶ 537. Accordingly, this aspect of Keci's protest was properly dismissed.

Keci further contends that we erred in dismissing as untimely its supplemental protest allegation that Reedy's quotation did not conform to the terms of the solicitation. Keci alleged that it first learned of this basis for protest from information contained in the agency's administrative report, which it received on November 15.

Under our Bid Protest Regulations, a protest must be filed within 10 working days after the basis of the protest is

known or should have been known, whichever is earlier, 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements since our Regulations do not contemplate the unwarranted piecemeal presentation or development of issues. See EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123.

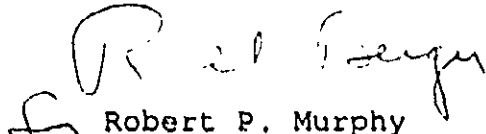
Keci does not dispute that the information which formed the basis for its supplemental protest was contained in the agency report, which Keci received on November 15. Instead, Keci argues that it was unfairly not advised when our Office extended Keci's time for submitting its comments that any new protest ground had to be raised within 10 working days from its receipt of the agency report. According to Keci, our Office unfairly penalized it for not filing its new protest issue on time even though the agency did not provide Keci a copy of the report until 6 days after the scheduled due date of November 9. Keci also argues that the 10-day rule for filing bid protests is "obscure."

Our prior decisions have explained that an extension of time for filing comments on an agency report does not waive the timeliness requirements for filing bid protests. Unitor Ships Serv., Inc., B-245642, Jan. 27, 1992, 92-1 CPD ¶ 110; CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413; Tri-States Serv., B-232322, Nov. 3, 1988, 88-2 CPD ¶ 436. Here, Keci acknowledged receipt of the agency report on November 15, and nothing in the record suggests that Keci could not have filed a timely supplemental protest within 10 days from that date. We fail to see, and Keci does not explain, how its receipt of the agency report on November 15, rather than on November 9, prevented it from filing a timely supplemental protest.

With respect to Keci's claim that it was unfairly treated because a representative of our Office did not remind Keci of our timeliness rules when granting it an extension for the due date for its comments, we disagree. Protesters are on constructive notice of our Regulations since they are published in the Federal Register and in the Code of Federal Regulations. Novitas, Inc.--Second Recon., B-238178.3, May 17, 1990, 90-1 CPD ¶ 483. In addition, our Regulations were referenced in our letter acknowledging receipt of Keci's initial protest. Keci's lack of familiarity with these Regulations is not a defense to dismissal of its supplemental protest issue as untimely filed. Since Keci did not raise its new protest ground until more than 10 working days after its receipt of the agency report, those issues were properly dismissed as untimely filed. GEC Avionics, Inc., B-250957; B-250957.2, Feb. 25, 1993, 93-2 CPD ¶ 24.

In its reconsideration request, Keci alternatively argues that we should consider its supplemental protest challenging the acceptability of Reedy's proposal under the "good cause" or "significant issue" exceptions to our timeliness requirements. 4 C.F.R. § 21.2(c). The good cause exception is limited to circumstances where some compelling reason beyond the control of the protester prevents the protester from submitting a timely protest. All Am. Moving and Storage--Recon., B-243630.2, Aug. 21, 1991, 91-2 CPD ¶ 184. Keci has not shown that some compelling reason beyond its control existed here. We also do not agree that Keci's protest raises issues significant to the procurement system. Our Office will not consider the merits of an untimely protest by invoking the significant issue exception where the protester does not raise an issue of first impression and which is of widespread interest to the procurement community. Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. While we recognize the importance of this matter to Keci, its untimely supplemental protest does not fall within these exceptions.

The request for reconsideration is denied.


Robert P. Murphy
Acting General Counsel