



Decision

Matter of: Savannah Cleaning Systems, Inc.--Request for Modification of Remedy

File: B-415817.2

Date: April 23, 2018

Mitzi A. Moore, for the requester.

Jennifer Misciagna, Esq., Department of the Navy, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's request for modification of remedy in a prior sustained decision--which was limited to reimbursement of the protester's costs--to include termination of the previously awarded contract and rejection of already-delivered goods under that contract is denied where the challenged recommendation is not inconsistent with our regulations and decisions.

DECISION

Savannah Cleaning Systems, Inc., of Savannah, Georgia, requests that we modify the recommendation in our decision in Savannah Cleaning Sys., Inc., B-415817, Mar. 27, 2018, 2018 CPD ¶ 119, in which we sustained Savannah's protest of the issuance of a purchase order to Border Construction Specialists, LLC (BCS), of Phoenix, Arizona, under request for quotations (RFQ) No. 1249714, issued by the Department of the Navy, Trident Refit Facility, for five pressure washers. The solicitation was issued under the General Services Administration's (GSA) Federal Supply Schedule (FSS). Given that the agency had already accepted delivery of the pressure washers from BCS, we recommended that the agency reimburse Savannah its quotation preparation costs and its costs of filing and pursuing the protest. In its request, Savannah challenges our recommendation and argues that we should have advised the agency to return the pressure washers and either make award to the next appropriate vendor or resolicit the requirement.

We deny the request.

BACKGROUND

As explained in the protest decision, the agency issued the RFQ via the GSA's e-Buy system pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. The RFQ contemplated the issuance of a fixed-price purchase order to be awarded on a best-value/technically acceptable basis for five pressure washers under the selected vendor's FSS contract. The agency requested quotations from 91 vendors and received quotations from nine vendors by the closing date. The quotation submitted by BCS was the lowest-priced, at \$19,994.45, and offered an alternative pressure washer. The quotation from Savannah was the second-lowest priced, at \$20,524.60, and offered the brand-name pressure washer. The agency issued the purchase order to BCS and posted notice of the award on November 28. Following an unsuccessful agency-level protest, Savannah filed a protest with our Office. Savannah Cleaning Sys., Inc., supra. As relevant here, the units were delivered to the agency on November 28. As of March 16, 2018, the units had not been opened or paid for, pending resolution of the protest. Agency Response to GSA Legal Opinion, Mar. 16, 2018, at 2; see also Agency Report, Jan. 31, 2018, at 4.

On March 27, we issued our decision, Savannah Cleaning Sys., Inc., supra, sustaining Savannah's protest. First, we concluded that the purchase order was improper because the agency should have instead amended the requirements of the solicitation when it determined that the pressure washer offered by BCS--which was less powerful with fewer features--was capable of meeting its needs. Second, we concluded that the purchase order was improper because the pressure washer was not listed on BCS's schedule contract and the applicable GSA guidance did not allow for the agency to order a different pressure washer than the model listed on a vendor's schedule contract as an ancillary service. In addition, the agency's improper actions "effectively precluded [Savannah] from having an opportunity to compete [and] Savannah had a substantial chance for award." Id. at 6. Given that the agency had already accepted delivery of the pressure washers from BCS, we recommended that the agency reimburse Savannah its quotation preparation costs and its costs of filing and pursuing the protest. Id.

DISCUSSION

In its request for modification of remedy, Savannah challenges our recommendation and argues, specifically, that we should have advised the agency to return the pressure washers and either make a new award or resolicit the procurement. Recon. Request at 1.

Under our Bid Protest Regulations, to obtain reconsideration, a requesting party must demonstrate that our prior decision contains errors of fact or law, or present new information not previously considered that would warrant reversal or modification of our earlier decision. 4 C.F.R. § 21.14(a); Bluehorse Corp.--Recon., B-413929.2, B-413929.4, May 16, 2017, 2017 CPD ¶ 149 at 4. Repetition of arguments previously made, or disagreement with our prior decision, do not provide a basis for our Office to reconsider the earlier decision.

Where we find that an agency's improper actions precluded a protester from having an opportunity to compete and where that protester had a substantial chance for award, we would ordinarily recommend substantive relief under our remedies listed in 4 C.F.R. § 21.8(a), such as recommending that the agency terminate the purchase order and amend the solicitation to reflect the agency's actual requirements. 4 C.F.R. § 21.8(a). However, such action is not feasible where the agency has already accepted delivery of the units under a purchase order. International Waste Indus., B-411338, July 7, 2015, 2015 CPD ¶ 196 at 6; American BallScrew, B-223915, Dec. 10, 1986, 86-2 CPD ¶ 664 at 6. Under such circumstances, our Office does not generally recommend substantive relief and may instead recommend that the protester recover its quotation preparation costs and the costs for filing and pursuing the protest under 4 C.F.R. § 21.8(d).

Here, we found that the agency's improper actions precluded Savannah from having an opportunity to compete where Savannah had a substantial chance for award; however, we did not recommend substantive relief because the agency had already accepted delivery of the pressure washers from BCS. Instead, we recommended that the agency reimburse Savannah its quotation preparation costs and its costs of filing and pursuing the protest. Our recommendation, under the circumstances, was not inconsistent with our regulations and decisions. 4 C.F.R. § 21.8(d); International Waste Indus., supra; American BallScrew, supra. Savannah's disagreement with our recommendation, without more, does not demonstrate error in our decision and thus provides no basis for reconsideration.

The request for modification of remedy is denied.

Thomas H. Armstrong
General Counsel