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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205087.2

DATE: December 28, 1981

MATTER OF: Valiant Security Agency

DIGEST:

Request for reconsideration is denied because protester submits no facts or arguments which were not considered during review of initial protest and no points of law on which a reversal could be based.

Valiant Security Agency has requested reconsideration of our decision Valiant Security Agency, B-205087, October 29, 1981, 61 Comp. Gen. _____, 81-2 CPD 367, where we summarily denied its protest without further development because the material submitted by Valiant, when read in the light most favorable to the protester, affirmatively demonstrated that it was not entitled to relief.

Section 21.9 of our Bid Protest Procedures, 4 C.F.R. part 21 (1981), requires that a request for reconsideration contain a detailed statement of the factual or legal grounds which allegedly warrant reversal of a decision of our Office. As shown below, Valiant has submitted no facts or arguments which were not previously considered and no points of law on which a reversal of our decision could be based. We therefore deny the request for reconsideration.

According to Valiant, the low bidder on this procurement for guard services was permitted to withdraw its bid on the basis that it had made a mistake. The contracting officer decided that Valiant, the second low bidder, was not eligible for award because the firm was owned by a Government employee and an award would contravene Federal Procurement Regulations (FPR) § 1-1.302-3. Award was made to the third low bidder at a price some \$20,000 higher than Valiant's, over the potential three-year duration of the contract.

In our decision, we held the agency did not act improperly in rejecting the bid of Valiant. We stated that while contracts with Government employees are not expressly prohibited by statute except in certain situations not present in this case, they are undesirable and should not be authorized except where the Government cannot otherwise be reasonably supplied. We further stated that even if the service would be more expensive if procured from other sources, that in itself provided no support for a determination that the service could not be reasonably supplied except from a concern owned by an employee of the Government.

Valiant contends the summary denial of its protest violated our Bid Protest Procedures, which do not specifically provide for such denials. Our procedures do, however, implicitly require a protester to allege grounds which, if supported, would indicate the presence of an agency error or violation entitling the protester to a remedy. In the absence of such an allegation, no useful purpose would be served by the expenditure of time and money which a request for an agency report would entail. Therefore, our policy has been to deny such protests without further development. See Alan Scott Industries, B-201743 et al., March 3, 1981, 31-1 CPD 159; Racon Inc., B-199964, September 3, 1980, 80-2 CPD 174; O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPD 267.

The protester also denies it asserted, as we stated, that the savings obtainable by acceptance of its bid should in itself have compelled the agency to award it the contract. It contends its position was that in view of the cost savings and "other points" it presented, the contracting officer should have considered requesting an exception to the policy against contracting with Government employees. Since Valiant repeatedly emphasized that the award to the next low bidder could cost the Government an additional \$20,000 over a three-year period, we do not think our characterization of its protest was unfair. The "other points" to which Valiant refers appear to be that it has a record of satisfactory performance, that the proposed contract would be with an agency other than that where Valiant's owner is employed, and that the personnel file of Valiant's owner contains no indication of any misconduct. Valiant argues that where these circumstances are present, and where obtaining the services from another firm would be more costly, the contracting officer should find there is a "most compelling"

reason for making an exception to the general policy prohibiting contracts with Government employees.

Valiant's argument, we think, tends to underestimate the depth of the policy against the Government contracting with its own employees. The policy is intended to avoid even the appearance, much less the fact, of favoritism or preferential treatment by the Government towards a firm competing for a Government contract; therefore, it is to be strictly applied. We have stated that an exception should be made "only where the needs of the Government cannot reasonably be otherwise supplied" and the fact that it would be more costly to contract with a firm not owned by a Government employee is not "sufficient to establish that the necessary equipment would not reasonably have been otherwise provided in view of the strong public policy against the Government contracting with its employees," 55 Comp. Gen. 681 (1976). The "other points" raised by Valiant are not sufficient to warrant an exception to this policy and we remain of the opinion that its bid was properly rejected.

Valiant also alleges that we failed to address several other "points of exception" which it raised. We considered all of Valiant's correspondence but did not address all the criticisms made by the firm since they seemed peripheral to its principal complaint, which was that its bid had been rejected because the firm was owned by a Government employee. In fact, the "Remedial Action Requested" portion of its protest centers entirely around the rejection of its bid and the fact that award was made to another firm at a higher price. Some of Valiant's additional "points of exception" are but different ways of questioning the contracting officer's authority to reject its bid, which we upheld. Others are either untimely, raise issues which we do not consider, or are of questionable relevance. For example, Valiant alleges that on two occasions it was not sent solicitations even though it had asked to be put on the bidders mailing list. This is clearly untimely under our procedures. The protester also seems to question the responsibility of the awardee, by asserting that the awardee was a recently-formed corporation with no performance history. We do not review contracting officer's affirmative determinations of responsibility absent circumstances not present in this case. Finally, Valiant

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questioned some aspects of the contracting officer's "handling" of this and prior solicitations which do not affect the propriety of the decision to reject Valiant's bid, which was what prompted the protest.

Harvey R. Van Cline
For the Comptroller General
of the United States