Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Grot, Inc.--Reconsideration

File: B-276979.3

Date: April 8, 1998

Robert J. Dambrino, Esq., Hickman, Sumners, Goza & Gore, for the protester.
Joseph A. Gonzales, Esq., and Larry E. Beall, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

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

DECISION

Grot, Inc. requests that we reconsider our decision in Grot, Inc., B-276979.2, B-277463, Aug. 14, 1997, 97-2 CPD ¶ 50, in which we denied Grot's protest of the cancellation after bid opening of invitation for bids (IFB) No. DACA01-97-B-0033, issued by the Department of the Army, Corps of Engineers, and the resolicitation of the same requirement. Grot argued that the agency lacked a compelling reason to cancel because the IFB did not contain ambiguous or defective specifications, which was the stated basis for cancellation. We denied the protest because we concluded that cancellation on the basis of inadequate specifications was proper since the specification deficiencies were such that the solicitation did not adequately reflect the government's needs, and the agency had improperly provided clarifications to only one offeror, namely the protester. In its request for reconsideration, Grot maintains that our decision is premised on alleged "admissions" of ambiguous specification made by Grot in the form of pre-bid opening letters requesting clarification of certain specifications, and asserts that those concerns had been addressed prior to bid opening by solicitation amendment No. 0003, which was issued on April 10, 1997.

We deny the request for reconsideration.

The solicitation was for the addition and/or replacement of fire protection devices and fire alarm systems in several buildings at Arnold Air Force Base. Four bids were received by the April 29 bid opening, ranging from $1,322,807 to $3,017,218.

The government estimate was $1,285,214. Grot's bid of $2,282,000 became low after the apparent low bidder claimed a mistake in bid and was allowed to withdraw its bid. When the agency compared the three remaining bids with the government's estimate, it concluded that none of them was in the "awardable range" (presumably meaning that none was at a reasonable price).

The agency subsequently examined the solicitation and determined that the specifications were ambiguous and in some instances did not clearly define the scope of work. The agency determined that the system design had to be clarified to ensure accurate understanding of the scope of work by bidders and concluded that this constituted a compelling reason to cancel the IFB. After cancellation, the specifications were revised and a new solicitation was issued on June 20 with a July 22 bid opening date.

Grot maintained that the clarifications and changes contained in the resolicitation were insignificant and that it was entitled to the award as the low responsive bidder. Based on the numerous and material defective solicitation specifications pointed out by the agency, we found the agency's determination to cancel the IFB was reasonable. We also noted in our decision that, while Grot asserted in its protest that the amended specifications were unambiguous, the record established that the protester repeatedly sought clarification from the agency regarding numerous specifications, including some that formed the basis for the agency's determination that the specifications were ambiguous.

In its reconsideration request, the protester asserts that all its concerns expressed prior to bid opening were resolved by the agency through the issuance of amendment No. 0003. Grot further objects that the existence of specification ambiguities does not provide a basis for the finding that there is a compelling reason for cancellation, as required by Federal Acquisition Regulation (FAR) § 14-1404-1(a). Despite the protester's current position that amendment No. 0003 satisfied all of its concerns, the record reflects that, on the contrary, after receipt of the amendment, by letter to the agency dated April 23, the protester expressed continued concerns about the asbestos removal requirement and the agency's failure to indicate heat detectors on the plans. In fact, the record established that, while amendment No. 0003 made a significant number of changes to the specifications, it did not correct all deficiencies and ambiguities contained in the solicitation. To the extent that Grot received other agency clarifications to which it alone was privy, this was insufficient to ensure that other bidders received an accurate description of the agency's actual requirements. Thus, as explained in our initial decision, even after amendment No. 0003, the agency had reasonable concerns about, among other things, ambiguities that existed between the plans and the specifications with respect to the scope of work for testing the existing fire alarm/detection system, for the removal of lead paint, and the additions to or replacement of existing fire alarm/detection systems devices for numerous buildings.

Contrary to the protester's understanding of what constitutes a compelling reason for cancellation, as explained in our initial decision, FAR § 14.404-1(c)(1) explicitly provides that a finding after bid opening that the solicitation contained inadequate or ambiguous specifications may constitute a compelling reason to cancel an IFB. Accordingly, there is no basis to object to the propriety of the agency's determination that the materially ambiguous solicitation specifications provided a compelling reason for cancellation.

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. § 21.14(a). To the extent that Grot's reconsideration request is predicated on other than its mistaken factual recitation, its repetition of arguments made during our consideration of the original protests and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, l988, 88-2 CPD ¶ 274 at 2.

The request for reconsideration is denied.

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of the United States