

**June 1, 1995**

**P.S. Protest No. 95-08**

**SYSTEM ADVANTAGE, INC.**

**Solicitation No. 102590-95-A-0014**

**DIGEST**

Request for reconsideration of decision which sustained protest against award of contract for computer personnel services but which declined to terminate the improperly awarded contract is denied; protester merely expresses disagreement with conclusions reached in decision and restates arguments made in original protest.

**ON RECONSIDERATION**

System Advantage, Inc., (SAI) has timely requested reconsideration of our April 19, 1995, decision, which sustained its protest against the award of a contract to Computer Experts for computer personnel services but which declined to terminate the improperly awarded contract.<sup>1</sup>

The procurement which was the subject of SAI's protest sought proposals for the services of one senior local area network (LAN) engineer and one systems analyst for support of the Postal Service Office of International Postal Affairs. Technical factors such as experience of personnel were to be considered in the award decision in addition to price. (SAI had been an incumbent provider of similar services under a contract awarded pursuant to simplified purchasing procedures in which price had been the only criterion for award.)

The contracting officer rejected SAI's original proposal as technically unacceptable because it contained the resumes of three LAN engineers, with three corresponding wage rates, rather than one. The contracting officer stated that she had "no fair way of evaluating SAI's" proposal because "we were not at liberty to choose one of the three rates . . . when the other offerors provided the specified one set of labor rates . . . ." SAI's protest

<sup>1</sup> The decision directed the contracting officer not to exercise the two one-year options in Computer Experts' contract. If the subject services are still required after Computer Experts' first year, the contracting officer must issue a new solicitation for them.

contended that it had offered three individuals with varying levels of qualifications and experience because it could not determine from the solicitation the level of personnel the Postal Service required. The protest pointed to language in the solicitation which provided for the submission of more than one resume. When it complied with the contracting officer's directive to choose one person and wage rate per position, SAI received the lowest technical score of the three offerors and the contracting officer concluded that its prices were unrealistically low, which SAI disputes.

The decision held that the contracting officer's determination that SAI's offer was technically unacceptable lacked a reasonable basis and stated, regarding the solicitation language: "At worst, sections J.4.a.2 [requiring a minimum of one resume per position] and M.2 [stating that one resume for each position would be evaluated], read together, stand for the proposition that where multiple resumes were submitted for a position, the technical evaluators would decide which one of the resumes would be selected for evaluation." The decision also discussed the solicitation's failure to explain to offerors how their technical proposals (resumes) were to be evaluated. Specifically, the solicitation seemed to indicate that price would be more significant than technical scores, except that between similarly priced proposals, the more qualified candidates would be selected. The contracting officer, however, indicated that technical scores and price were evaluated equally. Despite the flaws in the procurement, the decision did not direct the contracting officer to terminate Computer Experts' contract for convenience because the record did not establish that absent the errors, SAI would have won the award.

SAI's request for reconsideration stresses points made in the original protest and challenges our conclusion that we could not determine that absent the errors, SAI's proposal would have been selected. SAI asserts that under the solicitation as written, price was to be more significant than technical scores. SAI stresses that its candidates met the minimum qualifications and "we were over \$110,000 lower in cost to the Postal Service" and asserts that those facts clearly should have made SAI the contract winner. With regard to its cost realism, the protester restates its assertion that its "record of uninterrupted, consistently superior service under the previous [contract] at lower salary levels" shows that its salaries are reasonable.

SAI claims that it suffered substantial prejudice and that the Postal Service will as well, since it will pay substantially more to the awardee than it would have paid to SAI. SAI also questions for the first time the good faith of the contracting officer. SAI claims that it has suffered quantifiable harm "in the amount of the contract amount that was not awarded to our company. . . ."

SAI asserts that our directive to the contracting officer to resolicit this requirement after one year rather than to exercise optional extensions "will only unnecessarily add additional expense on the part of the Postal Service and again on those companies responding." SAI also claims that it will be prejudiced when the requirement is resolicited because its "superior proposal response methodology" and "winning strategy" are "now a matter of public record," which will allow other firms competitive advantage.<sup>2</sup> SAI asks that Computer

<sup>2</sup> Since the decision revealed neither the details of SAI's personnel resumes nor any offeror's proposed rates, we consider SAI's contention that its offer has been made public to be without merit.

Experts' contract be terminated and that award be made to SAI "based on the original three proposals already submitted."

The standard for our review of reconsideration requests is very narrow. PM 4.5.7 n. states that a "request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered." Further, the controlling decision on this standard of review states:

Information not previously considered refers to that which a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest. Reconsideration is not appropriate where the protester simply wishes us to draw from the arguments and facts considered in the original protest conclusions different from those we reached in that decision. Reassertion of arguments previously considered and rejected by this office does not constitute a ground for reconsideration. Similarly, where information and arguments were known or available to the protester during the development of its protest but were not presented in the original proceeding, such information and arguments may not be considered in a request for reconsideration.

*Fort Lincoln New Town Corporation, On Reconsideration*, P.S. Protest No. 83-53, November 21, 1983 (citations omitted); see also, *Rita Dwight, On Reconsideration*, P.S. Protest No. 92-15, October 21, 1992; *F.R. and Lee MacKercher, On Reconsideration*, P.S. Protest No. 85-45, October 7, 1985.

SAI presents no evidence, instead merely expressing strong disagreement with our conclusions and asking that we adopt its own. SAI mainly argues the same case as it did previously.<sup>3</sup> In so doing the protester has not met the requirements for presenting sufficient factual or legal grounds to warrant modification of our decision on reconsideration. *Fort Lincoln, supra*.

SAI suffered "quantifiable harm" in the legal sense only if it is reasonably apparent that SAI rather than Computer Experts would have been awarded the contract. See *TRW Financial Systems, Inc.*, P.S. Protest No. 91-19, May 29, 1991. SAI's continuing defense of its proposed salaries underscores the lack of certainty that SAI would have won absent the mistakes. As stated in the decision, this office will not overturn a contracting officer's determination that costs are unrealistically low unless that determination clearly was arbitrary or unreasonable. *AMR Distribution Systems*, P.S. Protest No. 92-36, October 2, 1992. Although we did not rule on the realism of SAI's price offer, the contracting officer's conclusions that SAI's salaries were so low as to jeopardize retention of personnel did not strike us as unreasonable. When, as in this case, the protester continues to defend its cost realism, a presumption of correctness attaches to the contracting officer's actions which the protester bears the burden of overcoming with evidence consisting of more than its opinion.

<sup>3</sup> SAI's new allegation of lack of good faith on the part of the contracting officer, unsupported by any evidence, may not now be considered. *Fort Lincoln, supra*.

*See Rickenbacker Port Authority and The Turner Corporation, P.S. Protest No. 91-78, February 10, 1992; TRW Financial Systems, Inc., supra.*

The request for reconsideration is denied.

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Contract Protests and Policies