



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Line Builders - Reconsideration
File: B-227811.2
Date: November 10, 1987

DIGEST

Request for reconsideration is denied where protester fails to show that decision was based on error of fact or law.

DECISION

International Line Builders requests reconsideration of our decision in International Line Builders, B-227811, Oct. 8, 1987, 67 Comp. Gen. ____, 87-2 C.P.D. ¶ ____, in which we denied International's protest of the Bonneville Power Administration's decision not to include the protester in a limited competition for the construction of two high voltage transmission lines. We also concluded that our Office had jurisdiction, pursuant to the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 et seq. (Supp. III 1985), to review Bonneville procurements, and that the Bonneville Acquisition Guide (BAG), and not the Federal Acquisition Regulation, governs Bonneville's procurement actions.

We deny the request.

Bonneville had limited the competition to three firms from a pool of contractors known to Bonneville to have the necessary capabilities, pursuant to section 6.270 of the BAG. That provision permits restricting a procurement to specific sources with appropriate capabilities if needed to ensure timely delivery of essential materials or equipment. International had contended that this approach amounted to an improper prequalification procedure that unduly restricted competition, because it did not provide all responsible sources a reasonable opportunity to qualify.

In denying the protest, we recognized Bonneville's status as an agency specifically authorized to conduct commercial-type transactions under a broad statutory grant of authority. We noted that the same Bonneville prequalification panel that selected the three competing firms also reviewed International's qualifications and recommended against International's inclusion in the competition because of a


perceived lack of necessary capabilities. We did not object to the rejection of International as a source since Bonneville in fact had reviewed International's qualifications and properly had followed the procedures set out in the BAG Subpart, and because we saw nothing arbitrary or unreasonable in Bonneville's actions.

International objects to our decision on the grounds that (1) the prequalification scheme reflected in section 6.270 of the BAG is inconsistent with decisions of our Office holding that such approaches often unduly restrict competition, and (2) the work required did not justify Bonneville's use of a limited competition.

Our objections to prequalification of offerors are founded on the fact that federal procurement statutes generally require full and open competition for government contracts. Nevertheless, we also have recognized that, under certain limited circumstances, prequalification may serve a legitimate need of the procuring activity. See Office of Federal Procurement Policy's films production contracting system; John Bransby Productions, Ltd., 60 Comp. Gen. 104 (1980), 80-2 C.P.D. ¶ 419. Moreover, none of the decisions to which International refers involves a Bonneville procurement, nor has International addressed the fact of Bonneville's long-recognized authority, founded in the Bonneville Project Act of 1937, to limit competition as it deems necessary. See 46 Comp. Gen. 349 (1966). As we observed in our prior decision, Bonneville's procurements are not subject to procurement rules and regulations normally applicable to federal agencies because Congress intended that Bonneville operate like a business and not like a government regulatory body. We therefore see no legal basis to take a general objection to section 6.270 of the BAG.

We also find no merit in International's argument that Bonneville's justification for limiting competition is both arbitrary and clearly erroneous because the work required is normal and not unique. The fact remains that Bonneville reviewed International's capabilities and found that International lacked the capability to perform the work required regardless of how the work is characterized. International does not address this point in its reconsideration request at all.

International has not shown that our decision was based on an error of fact or law. The request for reconsideration therefore is denied. Bid Protest Regulations, 4 C.F.R. § 21.12 (1987).


James F. Hinchman
General Counsel