



Comptroller General
of the United States

Washington, D.C. 20548

1034265

Decision

Matter of: Yellowhorse Industries--Reconsideration

File: B-250282.2

Date: May 24, 1993

Jane Yellowhorse for the protester.
John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request fails to show that the decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of decision.

DECISION

Yellowhorse Joint Venture (J.V.) requests reconsideration of our decision in Yellowhorse Indus., B-250282, Jan. 12, 1993, 93-1 CPD ¶ 35, in which we denied Yellowhorse's protest that the Bureau of Indian Affairs (BIA), Department of the Interior, acted improperly in rejecting the bid of Yellowhorse Joint Venture under invitation for bids (IFB) No. SB-92-0049, issued by the BIA for road construction at the Hopi Indian Reservation, Arizona.

We deny the request for reconsideration.

The IFB was issued by BIA's Phoenix Area Office on June 19, 1992, as a set-aside for 51 percent "Buy Indian" concerns pursuant to the Buy Indian Act, 25 U.S.C. § 47 (1988), and required offerors to complete a "Buy Indian Certification Statement." At the July 23 bid opening, five bids were received; Yellowhorse J.V. was the apparent low bidder.

In its bid Yellowhorse J.V. had certified that it was an eligible Indian economic enterprise, and included a copy of a Construction Management Agreement entered into on July 23, 1992, by the participants in the joint venture--Yellowhorse Industries and Wheeler Construction, Inc. According to this agreement, Wheeler would be performing all management services in connection with the construction and operation of the road building project in the areas of subcontracting, negotiating, reporting, scheduling, coordinating, inspecting work by subcontractors, and administering change orders.

The agreement was silent on the percentage of ownership for each participant. Thus, this agreement did not indicate that the Indian partner would be engaged in management activities or would be the majority owner, both of which are requirements for eligibility for award of an Indian set aside contract.

On August 21, the contracting officer determined that Yellowhorse J.V. was not eligible for award because it was not a valid "Buy Indian" concern for the purposes of this procurement, and awarded the contract to the second low bidder. Yellowhorse J.V. subsequently filed a bid protest with our Office, contending that the agency's determination that Yellowhorse J.V. was not eligible for award was unreasonable.

In its protest, Yellowhorse J.V. argued, among other things, that the agency had acted unreasonably because it did not consider a Master Joint Venture Agreement entered into by Yellowhorse Industries and Wheeler Construction on October 8, 1993, which purportedly clarified the rights and obligations of the parties to the joint venture. We denied Yellowhorse J.V.'s protest, finding with regard to the protester's argument concerning the Master Joint Venture Agreement that there was no requirement that the agency consider it because the Master Joint Venture Agreement was submitted on October 8, long after the July 23 bid opening and August 21 contract award.


In its request for reconsideration, Yellowhorse J.V. again argues that the agency acted improperly in not considering the Master Joint Venture Agreement. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our 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. § 21.12(a) (1993). Yellowhorse J.V.'s repetition of its argument made during our consideration of the original protest that the agency acted unreasonably in not considering the Master Joint Venture Agreement, and the protester's mere disagreement with our decision, do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

As explained in our prior decision, the agency reasonably made award to another firm because the extant documentation showed that Yellowhorse J.V. did not qualify as a Buy Indian concern. See Calvin Corp., B-245768, Jan. 22, 1992, 92-1 CPD ¶ 98. Thus, the evidence submitted months after award, purportedly to show that Yellowhorse J.V. was a Buy Indian

concern, need not be considered by the agency and in no way adversely reflects on the reasonableness of the agency's award decision. Id.

The request for reconsideration is denied.



 James F. Hinchman
General Counsel