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IN RE REQUEST FOR RECONSIDERATION
OF OPA APPEAL DECISION FILED BY
TORRES REFRIGERATION, INC.

)
)
) PSS IFB 97-0019
) DECISION ON REQUEST
) FOR RECONSIDERATION
) No. BP-A014.2
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BACKGROUND

Torres Refrigeration, Inc. (TRI) filed a request for reconsideration with this office on May 28, 1998 from the May 18, 1998 decision of the Office of the Public Auditor (OPA), which ratified the contract between the Public School System (PSS) and JWS Air Conditioning and Refrigeration (JWS) on the delivery and installation of 118 split type air conditioners (A/Cs) for Marianas High School (MHS). OPA's May 18, 1998 decision resolved the reconsideration requests filed by PSS and JWS.

On November 25, 1997, TRI filed an appeal with OPA from the Commissioner of Education's (Commissioner) denial of its initial protest on the award of this procurement to JWS. OPA granted this appeal in its March 31, 1998 decision, referenced as Decision No. BP-A014. After issuing OPA's March 31, 1998 decision on TRI's appeal, JWS and PSS filed requests for reconsideration from OPA's March 31, 1998 decision. These reconsideration requests did not convince OPA that the earlier decision contained errors of fact or law which would warrant a complete reversal of the March 31, 1998 decision. However, OPA determined in its May 18, 1998 decision that the violations in this particular procurement were not of such magnitude as to warrant the drastic remedy of directing the removal of the A/Cs installed at MHS by JWS. Accordingly, while sustaining TRI's protest, OPA recommended that the contract between PSS and JWS be ratified.

ANALYSIS

TRI filed its reconsideration request with OPA on May 28, 1998. Appeals to OPA concerning alleged violations of the PSSPR are governed by PSSPR Section 5-102, et. seq. It specifies the procedures, remedies, and due process requirements to be followed in processing an appeal. Section 5-102(9) provides for a request for reconsideration by a party adversely affected by an OPA appeal decision, with strict time limitations placed thereon. Nothing in the PSSPR provides for further proceedings after an OPA decision is made on a request for reconsideration.

It is important that affected parties take every opportunity provided in the PSSPR for commenting on issues raised during the appeal process. The appeal procedures in the PSSPR provides specific opportunities for interested parties to file their comments on issues raised in the appeal. After an appeal decision is issued by OPA, reconsideration of such decision may be requested by the appellant, any interested party who submitted comments during consideration of the protest, the Commissioner and any agency involved in the protest. Although not specifically required in the PSSPR, copies of the reconsideration request may be provided to other affected parties, and if they have comments on the issues raised in the reconsideration request, they may submit their comments to OPA "consistent with the need for prompt resolution of the matter." PSSPR 5-102(9)(c).

As shown in the above discussion, affected parties have an adequate opportunity to comment on the issues raised by an appellant, including issues that may later be raised under the PSSPR's reconsideration request process. As for TRI, it was accorded the same opportunity to present its comments on the issues covered in OPA's May 18, 1998 reconsideration decision, which is the subject of TRI's present reconsideration request. The discussions and conclusions in the May 18, 1998 decision were based on the reconsideration request filed by PSS to OPA on April 13, 1998. This decision also covered OPA's decision on JWS's request for reconsideration, because its issues were similar to the issues raised by PSS. A copy of PSS's reconsideration request was received by TRI on April 14, 1998, as shown in PSS's transmittal form.

Since TRI received a copy of PSS's reconsideration request, it had an obligation to raise its objections or make its comments to the issues raised by PSS. As it turned out, however, TRI failed to submit written comments on PSS's reconsideration request prior to OPA's issuance of its decision on May 18, 1998. Because TRI was previously given the opportunity to argue against PSS's reconsideration request, OPA cannot now consider any of TRI's subsequent objections to these issues. Since TRI passed up its opportunity to respond, OPA finds it inappropriate to consider TRI's May 28, 1998 request for reconsideration. Procedurally, no provision exists for OPA to entertain a request for reconsideration from a request for reconsideration.

DECISION

For reasons set forth above, TRI's reconsideration request is denied in its entirety. Nothing in the PSSPR provides for further proceedings after an OPA decision on a request for reconsideration is made.


Leo L. LaMotte
Public Auditor, CNMI

October 28, 1998