



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Global Industries, Inc.--Reconsideration

File: B-270592.6

Date: October 15, 1996

Richard S. Ewing, Esq., James A. Dobkin, Esq., John D. Roesser, Esq., Arnold & Porter, for the protester.

S. Gregg Kunzi, Esq., Thomas L. McGovern III, Esq., and David W. Burgett, Esq., Hogan & Hartson, L.L.P., for Nightingale, Inc., an intervenor.

C. Joseph Carroll, Esq., and Jonathan Cramer, Esq., Department of Justice, Federal Bureau of Prisons, for the agency.

Katherine I. Riback, Esq., and Glenn Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requesting party raises untimely arguments, seeks review of certain physical evidence in connection with an issue clearly lacking legal merit, and otherwise does not demonstrate that the decision contains errors of fact or law.

DECISION

Global Industries, Inc. requests reconsideration of our decision, Global Indus., Inc., B-270592.2 et al., Mar. 29, 1996, 96-2 CPD ¶ 85, sustaining its protest against the award of a contract for two lines of office chairs to Nightingale, Inc. under request for proposals (RFP) No. IPI-R-0315-95, issued by Federal Prison Industries, Inc. (UNICOR). We sustained Global's protest because we found that it had not been afforded meaningful discussions by the agency. In its request for reconsideration, Global argues that Nightingale's economy chairs did not provide lumbar support, as required by the solicitation. Our decision did not address this argument because we determined that it was untimely. Global also argues in its reconsideration request that our Office improperly denied its contention that the awardee's chairs failed to meet the RFP requirements regarding adjustable lumbar support.

We deny the request for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains 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) (1996); Richards Painting Co.–Recon., B-232678.2, May 19, 1989, 89-1 CPD ¶ 481.

We sustained the protest because we found that during discussions, the agency failed to point out certain evaluated problems with the comfort of Global's medium range and economy chairs which were of serious concern to the agency evaluators and were considered to be correctable. Eldyne, Inc., B-250158 et al., Jan. 14, 1993, 93-1 CPD ¶ 430, recon. denied, Department of the Navy–Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. We recommended that the agency reopen negotiations with all competitive range offerors, conduct meaningful discussions, and request new best and final offers.

In its reconsideration request, Global alleges that Nightingale's economy chairs did not provide lumbar support, as required by the solicitation; therefore, it reasons that Nightingale should be precluded from receiving the award, and award should be made to Global.¹ To be timely, Global was required to raise this contention not later than 14 days after it knew, or should have known, the basis of protest. 4 C.F.R. § 21.2(a)(2). Global first raised this argument on March 13 in its hearing comments, which were filed in our Office after Global filed its comments on the initial and the supplemental agency report. It is clear that Global should have been aware of the basis for its allegations that Nightingale's economy chairs do not provide the required lumbar support from its review of the agency report, which it received on January 18. In this regard, Global itself states that Nightingale's literature on its economy chairs (contained in the agency report) made no claim that the Nightingale economy chairs provided lumbar support. Since the record demonstrates that Global was aware of this argument by January 18, this aspect of the protest was untimely on March 13, and does not support a request for

¹Global previously argued that the chairs proposed by Nightingale for line items 0007L and 0009A did not provide "adjustable lumbar support," which is listed as an option for the medium range basic chair, the executive chair, and the medium range stool, respectively.

reconsideration now.² ASI Personnel Servs., Inc.--Recon., B-258537.8, Oct. 31, 1995, 95-2 CPD ¶ 198.

Next, Global argues that our Office should now take certain additional measures to properly consider evidence which we had before us. Global requests that we remove the fabric from the two medium range Nightingale stools that were presented at a hearing held in connection with the protest, and that we request from UNICOR the Nightingale U1860 (medium range) chairs in its possession, and also remove the fabric from these chairs. According to Global, our Office can only determine which chair back was actually provided to UNICOR by Nightingale by removing the covering fabric.³ Global's request involves the issue of whether the Nightingale medium range chair provided sufficient adjustable lumbar support as specified in the RFP. This issue was specifically addressed in our prior decision in which we pointed out the solicitation did not set forth any particular minimum requirement for lumbar support. As noted in our first decision, we conducted a hearing in this case in which all participants, including our hearing official, were afforded an opportunity to both visually inspect and sit in the chairs. Based on this, we found that the Nightingale medium range chair did meet the requirement to have adjustable lumbar support, as set forth in the solicitation. In essence, Global is seeking to have us further investigate the chair backs offered in order to determine the degree of adjustable lumbar support offered by the awardee's medium range chairs. However, as we expressly concluded that no particular degree of support was specified, no purpose would be served by assessing the precise degree of

²We note that, unlike the medium range chair, adjustable lumbar support was not included in the line items of options that were to be incorporated into the economy chair. Global appears to argue that the requirement for adjustable lumbar support is applicable to the economy chairs due to amendment No. 3, which states that "[b]oth chair lines (econo and medium) should emulate Human Factor Standard (HFS) 100." This Standard states that "support in the lumbar region shall be provided." However, in our view, HFS 100 alone does not require that adjustable lumbar support be incorporated into the economy chairs, especially when it is not specifically listed as an option to be included in these chairs.

³During the course of these protests, Nightingale produced three chair back cutaways, cross-sections of chair backs, to demonstrate its lumbar support mechanism. Each chair back provided differing amounts of lumbar support.

support in the chairs offered. Accordingly, there is simply no basis to now conclude that dissection of the Nightingale chairs is necessary to make this assessment. Global's mere disagreement with our decision does not provide a basis for reconsideration. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.⁴

The request for reconsideration is denied.

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⁴Although our original decision did not so specify, as is clear from this reconsideration request, Global's issues were clearly severable. Accordingly, our recommendation that Global should recover the reasonable costs of pursuing this protest should be limited to those costs associated with the issue on which Global prevailed--the agency's failure to conduct meaningful discussions with Global. We limit the recovery of protest costs to the issue on which the protester prevailed where these issues are clearly severable from those in which the protester was unsuccessful. Komatsu Dresser Co., 71 Comp. Gen. 260 (1992), 92-1 CPD ¶ 202; Interface Flooring Sys., Inc.--Claim for Attorneys' Fees, 66 Comp. Gen. 597 (1987), 87-2 CPD ¶ 106. In our view, limiting the recovery of costs to those issues on which the protester prevailed, where those issues are clearly severable from the remainder of the protest, is consistent with our statutory authority because it allows a protester to recover only those costs associated with its challenge to the portions of a solicitation, proposed award, or award that are determined violative of statute or regulation. Interface Flooring Sys., Inc.--Claim for Costs, *supra*.