

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-218963.2 DATE: June 26, 1985
MATTER OF: Evans, Inc.--Request for Reconsideration

DIGEST:

1. GAO affirms prior decision where the request for reconsideration merely expresses dissatisfaction with the earlier decision and restates the arguments made during the original protest.
2. A protester cannot use a request for reconsideration to furnish evidence that was available, but not proffered, at the time of its original protest.

Evans, Inc. (Evans), requests reconsideration of our decision in Evans, Inc., B-216260.2, May 13, 1985, 85-1 C.P.D. ¶ ____, where we denied the protest that its bid was improperly found nonresponsive by the Veterans Administration (VA) and that the awardee's bid should have been rejected as nonresponsive.

We affirm our decision of May 13, 1985.

In its original protest, Evans raised many contentions regarding the awardee's alleged inability to meet the requirements of the solicitation under invitation for bids (IFB) No. 532-15-84 for a laundry system. Although they were rejected in our earlier decision, Evans raises three of these arguments in its request for reconsideration.

Earlier, Evans argued that the awardee's (G.A. Braun, Inc. (Braun)) ironers were 118.5 inches wide, rather than the 120 inches specified in the solicitation. Evans, however, did not allege the deviation would affect performance of the Braun equipment. Its only contention was that a provision of the solicitation was not met, making the Braun bid nonresponsive. This argument was rejected because we found the agency properly determined that the deviation was immaterial.

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Evans also alleged that Braun's equipment was not certified by the American Society of Mechanical Engineers (ASME) as required by the solicitation. We denied this protest basis because the contracting officer concluded that due to its small capacity, the Braun ironer was exempt from ASME certification.

In its request for reconsideration, Evans makes the same arguments, stating that the Braun ironers were 1.5 inches too short in diameter and were not stamped by ASME, as the solicitation required. Evans' contentions, therefore, were fully discussed and rejected in our earlier decision. Evans is simply rearguing that Braun had an unfair competitive advantage because its products were accepted even though they deviated from the specifications.

A deficiency or deviation which goes to the substance of a bid by affecting the price, quality or quantity of the article offered is a major deviation that requires the bid to be rejected as nonresponsive. However, a deficiency which is a matter of form, or which constitutes some immaterial deviation from the exact requirements of a specification that would not affect either the price, quality or quantity of the article is a minor informality that may be waived or cured. Railroad Builders, Inc., B-189102, Oct. 13, 1977, 77-2 C.P.D. ¶ 292. Moreover, what constitutes a minor deviation is dependent on the particular circumstances of each case. Wholesale Tool Co., Inc., B-182445, Apr. 15, 1975, 75-1 C.P.D. ¶ 226.

Here, the contracting officer determined that the 1.5-inch differential was a minor deviation. Since the contracting officer found this would not affect either the quality or quantity of service provided by the equipment, or its price, there is no reason to overrule his decision to waive this irregularity. Further, Evans failed to demonstrate that the determination prejudiced Evans because there was no showing that it could have offered a different product with a 118.5-inch diameter at a lower price.

In addition, the contracting officer found that this equipment was exempt from the ASME stamping and certification requirement. The solicitation provision regarding ASME approval reads as follows:

"3.2.5 ASME. Acceptable evidence of meeting the requirements of ASME shall be a written certificate stating that each chest, chamber, and cylinder has been inspected by an inspector qualified under the provisions of the ASME code for pressure

vessels and that the ASME code official stamp has been placed on each chest, chamber, and cylinder by the inspector. The stamp on each chest, chamber, and cylinder shall contain the U or UM symbol, as applicable."

Evans argues that this provision required the ASME stamp on each piece of equipment and the ASME manual permits the stamping even if the item is exempt. While a manufacturer may have the option of having its equipment ASME stamped, even if exempt, such stamping was not required under this solicitation. The solicitation required meeting the requirements of ASME and exempt equipment is not required to be stamped by ASME.

Our Bid Protest Regulations require that a request for reconsideration specify any error of law made or information not previously considered in the protest. 4 C.F.R. § 21.12(a) (1985). Here, Evans is taking exception to our legal conclusion without providing any new arguments or facts. Mere disagreement with our prior decision does not provide a basis for reversal. Bataco Industries, Inc.--Reconsideration, B-212847.2, Apr. 18, 1984, 84-1 C.P.D. ¶ 441.

Evans' final argument is that despite the awardee's statements, Braun's dryers cannot meet the capacity requirements of the solicitation. We denied this protest basis in our earlier decision, noting that the manufacturer's advertised performance data showed that the system would exceed the required capacity. Now, Evans submits evidence that allegedly shows that Braun's equipment cannot meet the requisite capacity. The evidence is a catalog recently obtained by Evans for the contracted equipment that rates the capacity at 800 pounds per hour, instead of the 1,100 pounds claimed by Braun and the 900 pounds required by the solicitation.

A protester has the burden of affirmatively proving its position. It is required to present its complete case, including all facts and arguments that were relevant and available at the time of the original protest. Consequently, GAO will not consider evidence on reconsideration that a party could have furnished, but did not, during the initial consideration of a protest. SAFE Export Corporation--Reconsideration, B-205501.2, Jan. 17, 1983, 83-1 C.P.D. ¶ 40. Here, Evans is merely restating its original argument that the Braun dryer does not comply with solicitation requirements and basing its contention on a catalog that was previously available. Since Braun's bid

was found responsive, whether the item it actually supplies meets the requirements is a matter of contract administration. Meditech, Inc., B-217428, Jan. 16, 1985, 85-1 C.P.D. ¶ 45.

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