

DECISION

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

FILE: B-219001.2

DATE: April 9, 1986

MATTER OF: Hewitt, Inc.--Reconsideration

DIGEST:

1. Request for reconsideration is denied where additional information provided by protester does not show error of fact or law in initial decision.
2. Request for reconsideration which raises new issues that pertain to agency action under a subsequent procurement is considered a new protest and is dismissed for failure to meet independently the timeliness requirements of GAO's Bid Protest Regulations.

Hewitt, Inc., requests reconsideration of our decision in Hewitt, Inc., B-219001, Aug. 20, 1985, 85-2 C.P.D. ¶ 200, in which we denied Hewitt's protest of the cancellation of request for proposals (RFP) No. DAAH01-84-R-A843 for wedge assemblies. Hewitt also protests the subsequent purchase of a revised version of the wedge assembly requirement by the agency by issuance of an unpriced purchase order to Hughes Aircraft Co. (Hughes) under an existing contract.

The request for reconsideration is denied and the protest of the subsequent purchase from Hughes is dismissed.

RFP A843 was issued by the United States Army Missile Command (MICOM) for 66 wedge assemblies for the TOW/COBRA Missile System. Hewitt submitted the only acceptable proposal in response to the solicitation, but MICOM subsequently decided to replace that wedge assembly requirement, part No. 3439272 (hereafter referred to as part No. 272), because its cost was considered excessive and because the part required extensive adaptation in the field due to its inaccuracy for use in the TOW/COBRA telescope sight. The solicitation was, therefore, canceled on May 1, 1985. Hewitt protested the agency's action on the basis that the cancellation of the solicitation was not in the "best interest of the government" and that the price Hewitt offered was competitive.

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We denied the protest based on our finding that the agency had established a reasonable basis to support its decision to cancel the RFP.

Hewitt requests reconsideration on the basis that information it has acquired since the issuance of our August 20, 1985, decision allegedly refutes the agency's stated basis for its decision to cancel the solicitation. Specifically, Hewitt states that on August 29, 1985, MICOM published a synopsis in the Commerce Business Daily (CBD) for the wedge assembly requirement that it had initially sought to procure as part No. 272 under RFP No. A843. According to the referenced synopsis (published for informational purposes only) RFP No. DAAH01-85-R-0506, for the replacement wedge assembly, part No. 35577041 (hereafter referred to as part No. 041), was restricted to Hughes due to the urgency of the procurement.^{1/}

The record shows that on the same day the synopsis was published, the agency determined that to prevent the impairment of the TOW/COBRA Weapon System mission performance, it was in the best interest of the government to obtain the requirement pursuant to an unpriced purchase order from Hughes under a current contract. Thus, RFP 0506 was not issued, and when Hewitt attempted to obtain information necessary to respond to the solicitation, the agency informed Hewitt of its cancellation. Hewitt then proceeded to obtain a copy of the technical data package that contained the mechanical drawings of the telescope cluster assembly which includes part No. 041--the replacement for part No. 272.

In its request for reconsideration, Hewitt argues that its comparison of the technical drawings for part No. 041 with part No. 272 indicates that the new part will be more expensive and less cost effective than part No. 272, previously offered by Hewitt under RFP No. A843. In addition, Hewitt protests MICOM's procurement of the requirement for part No. 041 as an unpriced purchase order

^{1/} The agency explains in its report that acquisition of wedge assemblies part No. 041 from any source other than Hughes would require first article testing to assure acceptability of the item.

from Hughes rather than by competing the requirement under the proposed RFP No. 0506, with a waiver of the first-article requirement, which would have permitted Hewitt to submit an offer. In this regard, Hewitt maintains that it is capable of manufacturing the new part to the satisfaction of the government and, therefore, the requirement should be reopened as a competitive procurement.

Alternatively, Hewitt argues that the requirement should be filled by the use of part No. 272. As a basis for this argument, the protester claims that certain language that appears in a note in the drawings for the new part indicates that part No. 272 may be used as an alternate to part No. 041, and that nothing in the unpriced order issued to Hughes would prevent Hughes from providing part No. 272 in response to the order.

Hewitt's arguments concerning the projected cost of the new assembly do not warrant reconsideration of our prior decision. To prevail in a request for reconsideration, the requester must show error of either fact or law in our earlier decision. Ross Bicycles, Inc.--Request for Reconsideration, B-219485.2, July 31, 1985, 85-2 C.P.D.
¶ 110.

Hewitt has not denied that the original assembly is characterized by certain performance deficiencies as it is used by the procuring agency. In fact, Hewitt's correspondence to our Office in connection with this protest contains numerous statements which support the Army's determination that the redesigned wedge assembly (part No. 041) is significantly different from the original wedge assembly (part No. 272). Thus, even if Hewitt's assertion that the new assembly cannot be provided at a cost within the government estimate proves to be correct, that would not provide a basis for reversal of our earlier decision, which upheld the agency's cancellation of the solicitation for part No. 272, in part because the old wedge assembly no longer meets the Army's minimum needs.

Concerning the protester's allegation that the note in the drawings for the new assembly states that part No. 272 may be used as an "alternate" to the revised assembly, the agency explains that the purpose of the statement is to permit Army logistics personnel to dispose of any remaining stock of the original assembly with modifications as necessary. Thus the statement does not confer upon Hughes a right to supply the old-type wedge assembly in response to the order.

The remainder of Hewitt's assertions--that the agency should have competed the procurement for the revised assembly requirement or, alternatively, should have obtained the requirement through a procurement for the original assembly (part No. 272)--do not concern the validity of our initial decision and, in fact, are unrelated to Hewitt's initial protest of the cancellation of RFP No. A843. Instead, they constitute a challenge to the agency's action in obtaining the revised assembly requirement as an unpriced purchase order from Hughes rather than competing the procurement, and must, therefore, independently satisfy the timeliness requirements of our Bid Protest Regulations in order to be considered on the merits. See MTR, Inc.--Request for Reconsideration, B-216685.2, Dec. 4, 1984, 84-2 C.P.D. ¶ 624; Security Assistance Forces & Equipment OHG--Reconsideration, B-209555.2, Mar. 23, 1983, 83-1 C.P.D. ¶ 300.

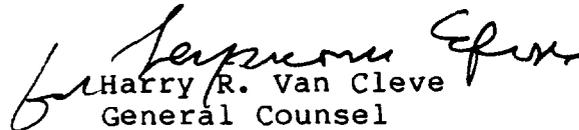
Our Bid Protest Regulations require that a protest be filed not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Hewitt contends that it became aware of the basis for this request for reconsideration when it received and studied the mechanical drawings of the revised assembly. With respect to Hewitt's allegation of improprieties on the agency's part in obtaining the revised assembly under a purchase order from Hughes, Hewitt seems to imply that the drawings provided a basis for its allegations because only upon studying the drawings did Hewitt know that it could provide the new wedge assembly.

We note, however, that concerning its response to the synopsis of the procurement in the CBD, Hewitt states:

"Since we were a supplier of the original assembly . . . we requested a bid package and a chance to bid on the revised assembly"

Hewitt requested the drawings sometime between September 3 (when it requested a copy of the solicitation package) and October 4 (the advertised closing date for the proposed RFP 0506) after being informed that the solicitation would not be issued. The protester's actions in no way indicate that prior to its receipt of the drawings it was doubtful of its ability to provide the assembly or that Hewitt did not know of the basis for its protest of the agency's action in declining to compete the requirement for the revised assembly. Thus, Hewitt could have protested the agency's action at the latest within 10 days after October 4, by which time

it knew of the agency's decision. Since, however, it did not file its protest until December 2, 1985, its allegations with respect to that procurement are untimely and will not be considered on the merits. Security Assistance Forces & Equipment OHG--Reconsideration, B-209555.2, supra, 83-1 C.P.D. ¶ 300 at 2.


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General Counsel