



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ernie Green Industries, Inc.--Reconsideration
File: B-222517.3
Date: August 21, 1986

DIGEST

Prior decision is affirmed in response to request for reconsideration where request does not establish that the decision included errors of law or fact that would warrant its reversal.

DECISION

Ernie Green Industries, Inc. (EGI) requests that we reconsider our decision in Ernie Green Industries, Inc., B-222517, July 10, 1986, 86-2 C.P.D. ¶ . In that decision, we (1) dismissed as untimely EGI's protest that the U.S. Army Armaments, Munitions, and Chemical Command (AMCCOM) had publicly disclosed EGI's pricing information in a competitive procurement and that AMCCOM then, in effect, conducted an auction by opening negotiations with other firms, and (2) denied EGI's charge that AMCCOM deliberately delayed dealing with the firm on a related solicitation in order to make EGI noncompetitive on the first one.

We affirm our decision.

EGI's first issue involved AMCCOM request for proposals (RFP) No. DAAA09-85-R-1126, a small business set-aside issued on Sept. 4, 1985, for 66,000 units of the M13 Decontaminating Apparatus. On December 4, after EGI and other firms had responded to the solicitation, AMCCOM referred to the price EGI had submitted in a mailgram sent to the Small Business Administration (SBA) concerning this and other on-going procurements of the M13 Decontaminating Apparatus. EGI charged that this constituted improper public disclosure of its price, and that the subsequent conduct of negotiations in the procurement therefore constituted an improper auction.

We dismissed this aspect of the protest as untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), EGI had to protest the alleged disclosure within 10 working days after the firm knew about it; EGI received the

mailgram on December 9, but did not protest until April 21, 1986. As to the auction allegation, EGI knew from an AMCCOM letter of Feb. 5, 1986, that negotiations would be conducted, so that the April 1986 protest also did not comply with our regulations' 10-day timeframe. We further stated that, in any event, EGI's contentions lacked merit. There was no evidence in the record that anyone other than EGI and the SBA had access to the information in the mailgram and, thus, that competition had been affected.

In requesting that we reconsider these matters, EGI points out that its prices in RFP-1126 in fact were disclosed outside of AMCCOM, albeit to the SBA, which the firm argues should, in itself, have been a basis on which to sustain the protest. Further, EGI would have us infer from that disclosure that its prices somehow also reached its competitors. Finally, EGI contends that its basis for protest arose only shortly before the filing with our Office.

EGI's position on reconsideration essentially is a reiteration of the arguments the firm presented, and which we fully considered, in connection with the bid protest. As such, the arguments do not provide a basis on which to reconsider our initial position. See S & O Corp.--Reconsideration, B-219420.2, Dec. 5, 1985, 85-2 C.P.D. ¶ 628. In any event, we remain of the view that EGI's protest on these matters was untimely since EGI knew about the disclosure of its RFP-1126 price to the SBA on December 9, and knew, in early February, that negotiations would be held. Moreover, EGI still has not shown that inclusion of EGI's price in the mailgram to the SBA had any effect on offers under the RFP.

The remaining issue in EGI's protest involved RFP No. DAAA09-85-R-0517, also for the M13 Decontaminating Apparatus, issued by AMCCOM on July 16, 1985, to the SBA for award to EGI under the authority of section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). As we understood EGI's protest, the firm was contending that AMCCOM intentionally delayed the award under RFP-0517 to preclude EGI from improving its competitive position under RFP-1126. EGI argued that if the section 8(a) contract had been timely awarded to EGI, the firm, as an existing producer at that point, could have submitted a lower offer in the competitive procurement.

We denied the protest on this matter. The record showed that AMCCOM had declined to award the section 8(a) contract because EGI was offering what the agency considered to be too high a price. EGI did not prove that AMCCOM's action was motivated by bad faith, i.e., the intent to injure EGI,

which, in view of a contracting officer's broad discretion in the section 8(a) program, is necessary to invoke our Office's review.

In its reconsideration request, EGI asserts that it was not protesting RFP-0517 at all, but nevertheless proceeds to take issue with certain of our factual statements regarding the matter. In view of EGI's current position that it did not intend to protest RFP-0517, however, no useful purpose would be served by our considering the issue further.

Our prior decision is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel