The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Daylight Plastics, Inc.--Reconsideration

File: B-225057.2

Date: April 28, 1987

DIGEST

1. Where agency properly determined due to urgent circumstances that it must use noncompetitive procedures provided for under the Competition in Contracting Act, agency properly may limit the procurement to the only firm it reasonably believes can promptly and properly supply the requirements, and need not solicit all firms interested in the acquisition. Agency is not required, under these circumstances, to refer agency conclusion that a firm is not capable of meeting delivery schedule to Small Business Administration for a certificate of competency determination.

2. A protester cannot use a request for reconsideration to furnish information that was available, but not submitted, at the time of its original protest.

DECISION

Daylight Plastics, Inc. requests reconsideration of our decision, Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 C.P.D. ¶ ___. In that decision, we denied Daylight's protest of the Army's sole-source award to Proll Molding Co., Inc., under request for proposals (RFP) No. DAAA09-86-R-2066, and the cancellation of RFP No. DAAA09-86-R-0127. We deny the request for reconsideration.

In its protest filed with our Office on October 27, 1986, Daylight protested the Army's finding that the plastic combat and training magazines--components of the M249 Squad Automatic Weapon System (SAWS)--were in critically short supply. The agency found that this shortage could be alleviated by making an immediate award for these requirements provided delivery would commence 90 days after award, thereby preventing a line shutdown of SAWS ammunition production at its munitions plant. The agency further determined that

Proll was the only firm capable of meeting this delivery schedule and a sole-source award for these items was therefore made to Proll.

Daylight challenged the noncompetitive award on the basis that the alleged critical shortage was artificially created and that consequently there was no urgent need for a 90-day delivery schedule. Alternatively, the protester argued that if the urgency determination was reasonable, award to Proll at prices considerably higher than Daylight's was per se improper because the agency had not solicited Daylight, a known potential supplier of these magazines. We denied Daylight's protest primarily because we found that an urgent need for these items did in fact exist; that a 90-day delivery schedule would satisfy the agency's need for these items; and that the Army reasonably determined under these circumstances that Proll was the only firm capable of meeting the delivery schedule.

In its request for reconsideration, Daylight for the first time alleges that the Army's determination that the firm was not capable of meeting the 90-day delivery schedule constitutes a de facto determination of nonresponsibility and that the Army could not preclude Daylight from competing because of its alleged nonresponsibility without first referring the matter to the Small Business Administration (SBA) for a certificate of competency determination. 15 U.S.C. § 637(b)(7)(A). Since Daylight's original protest alleged that the contracting officer erroneously concluded that Daylight was not capable of meeting the 90-day delivery schedule, it is apparent that Daylight then knew or should have known whether that determination was referred to the SBA. Thus this basis for protest, first filed in the reconsideration request more than 10 working days after Daylight knew or should have known about it, is untimely. 4 C.F.R. § 21.2(a)(2) (1986).

In any event, there is no merit to Daylight's contention. In Industrial Refrigeration Service Corp., B-220091, Jan. 22, 1986, 86-1 C.P.D. ¶ 67, we held that under the urgency justification for use of noncompetitive procedures under the Competition in Contracting Act of 1984, the agency can limit the sources solicited to those it reasonably believes can perform the work and to which it could expect to make a prompt award, and is not required to refer the issue of an excluded source's apparent nonresponsibility to the SBA.

Daylight also requests that we consider additional information it obtained on or about December 30, 1986, in response to a Freedom of Information Act (FOIA)

request it filed with the Army. This additional information concerns two protest issues we addressed in our previous decision: the validity of the inventory for the combat and training magazines at the time the agency made its finding that these items were in critical short supply as well as the reasonableness of the award price.

Our Office will not reverse or modify a decision unless the request for reconsideration demonstrates that errors of fact or law exist in the original decision that warrant reversal or specifies information not previously considered. 4 C.F.R. § 21.12(a); Evans, Inc.--Request for Reconsideration, B-218963.2, June 26, 1985, 85-1 C.P.D. ¶ 730. Information not previously considered means information that was not previously available to the protester. Otherwise, a protester could present its protest in a piecemeal fashion, possibly disrupting the procurement process indefinitely. See SER-Jobs for Progress, Inc.--Request for Reconsideration, B-222469.2, June 6, 1986, 86-1 C.P.D. ¶ 532.

Here, Daylight is merely reiterating its original arguments based on evidence previously available but not submitted to us. Daylight could and should have provided this additional information for our consideration during the pendency of its protest; and, in the absence of a showing of good cause for failure to timely present the information, this information will not be considered. See Evans, Inc.--Request for Reconsideration, B-218963.2, supra; SER-Jobs for Progress, Inc.--Request for Reconsideration, B-222469.2, supra. Daylight has not made such a showing.

Accordingly, the request for reconsideration is denied.

for Stephen Ezell
Harry R. Van Cleve
General Counsel