



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Minuteman Aviation, Inc.--Request  
for Reconsideration  
**File:** B-231504.2  
**Date:** October 13, 1988

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### DIGEST

Request for reconsideration is dismissed where argument raised by protester is one which could and should have been advanced in its original protest, as General Accounting Office's Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues.

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### DECISION

Minuteman Aviation, Inc., requests that we reconsider our decision in Minuteman Aviation, Inc., B-231504, Aug. 4, 1988, 67 Comp. Gen. \_\_\_\_\_, 88-2 CPD ¶ 115. In that decision, we denied Minuteman's protest of the rejection of its bid under invitation for bids (IFB) No. R1-04-88-31, issued by the Forest Service, Department of Agriculture, for helicopter services.

We dismiss the request for reconsideration in part and deny it in part.

The IFB, issued March 28, 1988, contemplated multiple awards on a "call-when-needed" basis for helicopter services in the Forest Service Northern Region, primarily in conjunction with forest fire suppression. The IFB requested each bidder to provide information concerning the bidder's safety record for the preceding 36 month period. Specifically, each bidder was required to list, among other things, the total number of accidents during the period, the cause of each accident, the extent of damage, injury or death resulting, and the effort taken to eliminate the same kind of accident. The IFB stated that the information furnished would be used to determine the responsibility of the bidder, and it stressed that the safety of the operation under the contract was of critical importance in the procurement.

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Bids were received and evaluated. Minuteman provided information concerning its previous accidents as required by the IFB and identified certain safety improvements in its operations to prevent further accidents. However, because Minuteman had four accidents resulting in seven deaths in the previous 36 months, the Forest Service and Minuteman discussed incorporating an existing Minuteman safety proposal into a resulting contract.<sup>1/</sup> On May 11, the contracting officer signed the contract the agency proposed to award to Minuteman, as well as a cover letter stating that the safety proposal was "incorporated by reference into the contract in its entirety." On that same day, the contracting officer advised Minuteman by telephone that award was contingent upon the inclusion of the safety proposal. The following day, May 12, the contracting officer hand-delivered the contract, with the cover letter, to the protester. Minuteman then objected to the inclusion of the safety proposal. The contracting officer notified the protester by letter dated May 13 that no contract would be awarded to Minuteman.

In its protest, Minuteman argued that it submitted a bid which complied with the terms of the IFB, that the contracting officer executed the contract documents, and that consequently a valid contract existed effective May 11. We rejected this argument because we determined that the government never tendered a clear, unequivocal, and unconditional acceptance. We stated that the IFB provided that only a written award or acceptance "mailed or otherwise furnished" to the bidder (as opposed to mere execution of the contract documents) would "result in a binding contract." Here, the executed contract, with the cover letter imposing the additional condition, was furnished to the protester on May 12, and the protester never agreed to the new condition. Thus, we found that there was never an agreement as to a material term and that a contract never came into existence.

In its request for reconsideration, Minuteman principally argues that our finding that there was no agreement as to a material term was "premised upon a selective choice of facts presented to GAO in this protest," and that our decision ignored key facts which were of "far more probative value." Specifically, Minuteman argues now for the first time that

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<sup>1/</sup> The safety proposal, dated March 25, 1988, and amended April 15, had been submitted by Minuteman to the Forest Service in response to negotiations involving other existing contracts for helicopter services.

its responses to the IFB questions regarding the bidder's accident records and its proposed safety improvements in its operations eliminated the requirement for the disputed safety proposal. It contends that the safety measures identified in its response to the IFB questions were precisely the same measures identified by Minuteman in its safety proposal, and thus the contracting officer's inclusion of the proposal was improper, redundant, and unnecessary.

We think this argument is untimely. Minuteman never previously made this argument that the inclusion of the safety proposal was improper because it was redundant and unnecessary in view of its responses to the IFB questions used by the agency to determine the responsibility of bidders. A protester may not raise a new ground of protest in a request for reconsideration which could and should have been made in its original protest, as our Bid Protest Regulations do not contemplate the unwarranted piecemeal development or presentation of protest issues. Adrian Supply Co.--Reconsideration, B-225630.3 Aug. 7, 1987, 87-2 CPD ¶ 136. Accordingly, we dismiss this part of the request for reconsideration.

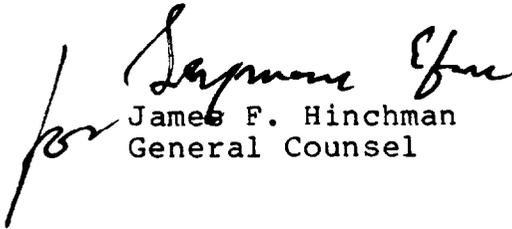
In any event, the argument is without merit. First, the contracting officer in his report rebuts the contention that the safety proposal was unnecessary; he states that "the proposal directly addressed various operations within the company designed to improve the safety performance" and that without the incorporation of the safety proposal into the contract, "there would be no assurance that the improvements would actually be made." Thus, the inclusion of the proposal was necessary to obligate the firm to improve the safety performance of its operation. The previous information Minuteman provided related only to responsibility matters. In this regard, if we accept the protester's assertion that the safety proposal served no useful purpose, logic dictates that there would be no reason for the protester to have objected to its inclusion. Instead, the record shows that on May 12, when the contracting officer hand-delivered the proposed contract, Minuteman objected to the inclusion of the safety proposal and refused to accept its terms.

Minuteman also objects to the conclusion in our prior decision that the submission of the safety proposal pertained to "contractual obligations" and not Minuteman's responsibility. Minuteman cites language in the solicitation to support its position that the government's attempt to incorporate the safety proposal in the resulting contract is tantamount to a constructive de facto nonresponsibility

determination, which should have been referred to the Small Business Administration. Specifically, it refers to the provision in the solicitation which states that information furnished concerning a bidder's safety records will be used to determine the responsibility of the bidder. It argues that because that information related to responsibility, that the safety proposal was also a matter of responsibility.

We carefully considered this argument in our prior decision. Minuteman's repetition of its earlier argument shows that it simply disagrees with the conclusions in our prior decision; however, mere disagreement or reiteration of previously rejected positions does not provide a basis for reconsideration. Sony Corporation of America--Reconsideration, B-225512.3, Apr. 10, 1987, 87-1 CPD ¶ 397. We therefore will not address this argument again.

The request for reconsideration is dismissed in part and denied in part.

for  
James F. Hinchman  
General Counsel