



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sletager, Inc.--Request for Reconsideration

File: B-233350.2

Date: April 18, 1989

DIGEST

Request for reconsideration of prior decision holding that procuring agency properly canceled solicitation after bid opening where the specifications were ambiguous and award would not meet the government's minimum needs is denied where the protester essentially restates its initial arguments and does not show that the prior decision was based on an error of fact or law.

DECISION

Sletager, Inc., requests reconsideration of our decision in Sletager, Inc., B-233350, Feb. 17, 1989, 89-1 CPD ¶ _____, in which we denied its protest against the cancellation after bid opening of invitation for bids (IFB) No. DACA67-88-B-0068, issued by the United States Army Corps of Engineers, Seattle District, for the exterior painting of certain housing. We deny the request for reconsideration.

Prior to cancellation, an amendment to the IFB deleted a paragraph which required caulking of existing window frames and sills on exterior sides at two areas and caulking of interior sides of all windows in residences at two other areas. The intended purpose of deleting the paragraph was to remove erroneously listed housing areas from the solicitation. Although the amendment deleted the requirement for interior and exterior caulking at specific areas, the Corps still intended for bidders to compute their bids on providing interior and exterior caulking at the remaining areas.

At bid opening, the low bid of \$353,800 and Sletager's next low bid of \$546,725 were both significantly lower than the government estimate of \$1,136,400. After requesting verification, the Corps rejected the low bidder because it did not include interior caulking in its bid price. When asked to verify its bid, Sletager also indicated that its

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price did not include interior caulking. Therefore, the contracting officer determined that bidders were confused about the requirement for interior caulking and canceled the solicitation based on an ambiguity in the specifications.

In the initial protest, Sletager contended that the IFB, as amended, did not require bidders to provide interior or exterior caulking. Sletager asserted that it was entitled to the award because all bidders acknowledged the amendments and bid on the same requirements, and the award would result in a binding contract that would satisfy the needs of the government.

We held that the Corps properly canceled the solicitation because the amendment created an ambiguity in the specifications which, if an award were made, would result in either not meeting the government's minimum needs or prejudice to the other bidders. While the IFB painting schedule and drawings did not require caulking, other sections of the IFB did require interior and exterior caulking. Therefore, we found that the specifications were ambiguous because they were susceptible to more than one reasonable interpretation, and this ambiguity provided a sufficient basis for cancellation.

Further, the Corps reported that an award to Sletager would not meet the agency's minimum needs because Sletager did not intend to, and was not bound to, provide interior caulking, and that caulking was needed to prevent moisture problems in the kitchen and bathroom areas. Therefore, we found that even though Sletager questioned the need and effectiveness of caulking in eliminating moisture problems, its conflicting opinion did not demonstrate that the Corps' requirements were unreasonable.

In support of its reconsideration request, Sletager again argues that there was no ambiguity in the specifications because all bidders bid on the same requirements and that an award to it under the solicitation, notwithstanding the ambiguity, would result in a binding contract that would satisfy the agency's needs. Sletager takes issue with our conclusion that canceling the solicitation was proper as an award would not satisfy the Corps' minimum needs because the Corps did not list minimum needs as the basis for canceling the solicitation in the notice to bidders of the cancellation.

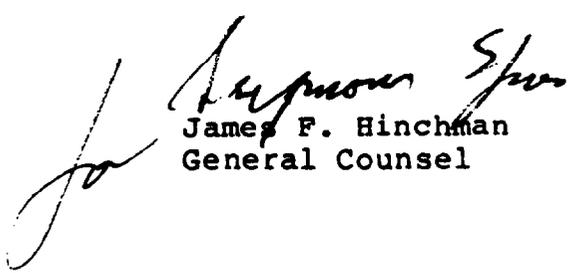
Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal

or modification of our decision. 4 C.F.R. § 21.12(a) (1988). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. See R.E. Scherrer, Inc.--Request for Reconsideration, B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

We find that Sletager's request for reconsideration merely repeats arguments made in its original protest that we considered in reaching our initial decision. While Sletager reasserts an argument about the significance of the fact that the base item in the government estimate did not reflect interior caulking, this is not relevant because the Corps reported that the solicitation was intended to solicit interior caulking, and the caulking requirement was necessary to meet its minimum needs. We held that Sletager had not demonstrated that the Corps' need for interior caulking was unreasonable. Sletager also argues that our decision failed to address a question which it had raised about the possible inclusion of the caulking requirement under a previously held maintenance contract. We have ascertained from the Corps that interior caulking was not included in that contract.

The fact that the Corps did not cite minimum needs as a basis for canceling the solicitation in the original notice to bidders does not affect the validity of the cancellation, since information supporting a cancellation may be considered no matter when it first surfaces, even if it is first raised by the agency in response to a protest to our Office. Ford Aerospace and Communications Corp. et al., B-224421.2 et al., Nov. 18, 1986, 86-2 CPD ¶ 582. Accordingly, we find no basis to disturb our original decision.

The request for reconsideration is denied.



James F. Hinchman
General Counsel