



The Comptroller General
of the United States

Washington, D.C. 20548

McWhirtee

Decision

Matter of: Aydin Corporation--Reconsideration

File: B-224185.3

Date: August 25, 1989

DIGEST

General Accounting Office decision concerning a different procurement issued 2 years after a previous protest decision was denied does not provide basis to reconsider the 2-year old decision since new decision does not operate retroactively.

DECISION

Aydin Corporation requests further reconsideration of our decision in Aydin Corp., B-224185, Nov. 28, 1986, 86-1 CPD ¶ 625, aff'd, B-224185.2, Feb. 10, 1987, 87-1 CPD ¶ 141.

We deny the request for reconsideration.

Aydin's original protest was based on the rejection of its proposal as technically unacceptable under Department of the Air Force request for proposals (RFP) No. F64608-86-R-0001, for the acquisition and installation of an "off-the-shelf" digital microwave system for the Republic of the Philippines. Aydin's proposal was found to be technically unacceptable under the Equipment Performance Specification (EPS-85-002) of the RFP that required "the bidder [to] offer radio and digital multiplex equipment that [had] been operated successfully as a full[y] integrated system carrying real (not simulated or test) traffic in either military or commercial applications." (Emphasis added.) In September 1986, the contracting officer rejected Aydin's proposal because Aydin had not offered equipment that had operated successfully as a fully integrated system prior to award of that contract as required by the RFP. Aydin then protested to our Office.

In our original decision, we found that the contracting officer acted reasonably in rejecting Aydin's proposal because Aydin, by its own admission, did not propose a system that had operated successfully as an integrated system carrying real traffic. We interpreted the RFP's

046325/139414

specification as requiring offered equipment to have been in prior operational use, and we rejected Aydin's contention that compliance with this requirement at some future time of delivery was acceptable. We affirmed our decision upon reconsideration.

Aydin now seeks reconsideration of our prior ruling based on the decision in a recent case. Aydin asserts that our decision in Space Vector Corp., B-234071, May 4, 1989, 89-1 CPD ¶ 426, is "irreconcilable" with our decision on its protest and provides it with a basis for reconsideration and for an award of costs.

In Space Vector, a firm protested the award of a contract under an Air Force solicitation. The RFP in that case solicited offers on a cost-plus-fixed-fee basis to design, fabricate, test, and assemble a single stage rocket vehicle system. The protester alleged that the awardee's proposal under the solicitation was technically unacceptable because it did not propose to use a "flight proven" boost control subsystem as allegedly required by the RFP.

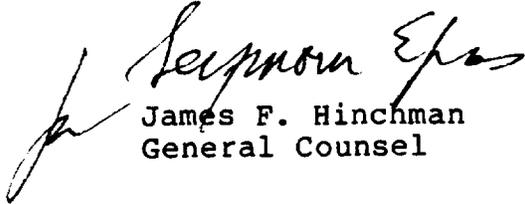
We denied the protest on the grounds that the specifications merely stated that "the contractor shall provide" a rocket vehicle system that uses a flight proven boost control subsystem. (Emphasis added.) Because the RFP never stated that the boost control subsystem was a precondition to award, our Office held that the boost control subsystem only had to be flight proven by the time of delivery to the Air Force.

We do not think that Aydin has stated a valid basis for reconsideration. Our decisions seek to resolve protests against the award or proposed award of a contract by federal agencies in an expeditious manner to minimize any disruption to the procurement system. We do not think that it would be consistent with this purpose to reconsider a decision based on another decision issued more than 2 years later, even if the decisions appear inconsistent, since our decisions generally are not retroactive but are of prospective effect only. We therefore will not reopen matters decided years before at the request of the losing party involved in a protest in the past.

We note, for Aydin's information, that the decisions in Space Vector and Aydin are reconcilable. In Aydin, the RFP stated that offerors must offer systems that were already in use and carrying live traffic (essentially "off-the-shelf" equipment). On the other hand, in Space Vector, the RFP did not solicit existing equipment but required the successful contractor to design, fabricate, test, and assemble a new

rocket system. Further, the RFP in Space Vector never mentioned that the boost control subsystem had to be flight proven at the time of award, and such a requirement was not a condition of award. Rather, the subsystem had to be flight proven only by the time of delivery.

The request for reconsideration is denied.

James F. Hinchman
General Counsel