

TERRY



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Piezo Crystal Co.--Request for Reconsideration
File: B-236160.2
Date: April 11, 1990

Dorn C. McGrath III, Esq., Zorc, Rissetto, Weaver & Rosen,
for the protester.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester reiterates arguments which were considered and rejected in General Accounting Office's decision, and disagrees with decision, but presents no argument or information establishing that decision was legally or factually erroneous.

DECISION

Piezo Crystal Co. requests reconsideration of our decision in Piezo Crystal Co., B-236160, Nov. 20, 1989, 69 Comp. Gen. ___, 89-2 CPD ¶ 477, in which we denied Piezo's protest against the award of a sole-source contract to Hewlett-Packard Company (HP) by the Defense Electronics Supply Center (DESC), Defense Logistics Agency (DLA), under request for proposals (RFP) No. DLA900-89-R-A096 for crystal controlled oscillators.

We deny the request for reconsideration.

In its protest, Piezo challenged the sole-source award of the contract on the basis that the agency did not synopsise the procurement as a sole-source requirement, failed to demonstrate that the product was available only from one source, and did not develop specifications for the oscillator so as to foster competition on the basis of performance requirements. We concluded that Piezo's protest that the agency failed to properly synopsise the sole-source procurement was untimely, since it was not filed until after the award of the contract and the protester knew or should have known, from the Commerce Business Daily (CBD) notice

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and the solicitation, that HP was the intended source and the requirement was being procured on a restricted basis.^{1/} We further held that the agency reasonably concluded that only one source was available and provided adequate justification for conducting the procurement on a sole-source basis. In addition, we found no merit to Piezo's allegation that it should have been given a more meaningful opportunity to prove that its offered product met the agency's minimum needs, since the protester admittedly did not provide sufficient data in its proposal to permit the agency to determine whether the product which it offered was acceptable.

In its request for reconsideration, Piezo disagrees with our conclusion that even if Piezo did not construe the solicitation as specifying the HP product, Piezo was required to protest prior to the closing date that the solicitation was ambiguous. Piezo points out that (1) it was only after nearly 9 months of review that the "ambiguity" was discovered; and (2) Piezo was not aware that GD oscillators were previously determined to be unacceptable. Piezo also disputes our statement that DESC evaluated Piezo's proposal, and contends that "DESC is neither inclined to evaluate sources, nor competent to do so."^{2/} Piezo's request for reconsideration provides no basis for us to reconsider our November 20 decision. Piezo's request is primarily a repetition of its previous arguments and a disagreement with our decision. The protester has not shown that our decision contained errors of fact or law that would warrant reversal

^{1/} The CBD notice called out the HP oscillator by its brand name, HP's product number, the HP national stock number and a General Dynamics (GD) drawing number. The notice also contained a reference to a CBD note which advised potential offerors that available data was not sufficiently complete to provide all necessary manufacturing and construction detail, but did not explicitly inform potential offerors of the intended sole-source procurement.

^{2/} Piezo also alleges that we made a factual error insofar as we concluded that it did not offer the "exact product" called for in the RFP. We concluded that Piezo was offering a product based on the GD specifications. Piezo argues that it neither offered a GD oscillator nor a HP oscillator, rather a combination of the two. However, in either case, Piezo was not offering the "exact product," called for in the solicitation, and this allegation does not provide any basis on which to modify our decision.

or modification. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1989); Applied Power Technology Co., and Contract Servs. Co., Inc.--A Joint Venture--Request for Reconsideration, B-227888.2, Mar. 10, 1988, 88-1 CPD ¶ 247. Reiteration of arguments made during resolution of the original protest, or mere disagreements with our decision, does not meet the standards for reconsideration. Id. We will nevertheless, briefly readdress the protester's arguments below.

Despite Piezo's arguments to the contrary, as we concluded in our decision, the CBD notice evidenced the agency's intention to specify the new model HP oscillator. Piezo's allegation regarding its interpretation of the solicitation requires the conclusion that the solicitation is ambiguous. A protest challenging either of these interpretations must be filed before the closing date for receipt of initial proposals. In fact, the solicitation called for a HP product by its brand name, exclusive product number, and exclusive NSN, but stated that the item should be built in accordance with GD drawings. As we noted in our decision, this description clearly evidences the agency's requirement for the HP product, or at most is ambiguous. Further, Piezo's lack of knowledge that GD oscillators were unacceptable is irrelevant because, in any event, it is not possible to manufacture a HP oscillator using GD specifications. Piezo's offer to provide an oscillator which it now states is neither a GD nor a HP oscillator, as the "exact product" so that it did not have to prove compliance, is simply inconsistent with the solicitation.

Piezo's allegation that DESC is neither inclined nor competent to evaluate technical aspects of proposals is without foundation. As we indicated in our decision, the record reflects that DESC examined Piezo's technical proposal and determined that it did not offer the "exact product" as it alleged. The agency evaluators further found that Piezo did not supply sufficient information to determine whether its product was acceptable, and that further tests were not possible because of time constraints. As we have previously stated, this was not unreasonable.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel