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Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Moog Inc.--Request for Reconsideration

**File:** B-237749.2

**Date:** June 14, 1990

Deborah Norman-Lane, Esq., for the protester.  
Arthur D. Smith, for Texas Aerospace Services, Inc., an interested party.  
Judy Sukol, Esq., Department of the Army, for the agency.  
Behn Miller, and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Reconsideration request is denied where the protester essentially reiterates arguments made in initial protest and presents no evidence that prior decision was based on factual or legal errors.

## DECISION

Moog Inc. requests reconsideration of our prior decision Moog Inc., B-237749, Mar. 19, 1990, 90-1 CPD ¶ 306, concerning request for proposals (RFP) No. DAAJ09-89-D-0176, issued by the Army Aviation Systems Command (AVSCOM) for overhaul and maintenance of helicopter pitch trim actuator assemblies for the UH-60 helicopter.

We deny the request for reconsideration.

Issued on June 14, 1989, the RFP stated that award would be made to the "responsive and responsible offeror whose proposal is evaluated at the lowest total cost to the Government" based upon the total of the firm, fixed-prices

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for the maximum quantity of assemblies to be overhauled and maintained over the 3-year term (contract line item Nos. (CLIN) 0001AA, 1001AA and 2001AA).<sup>1/</sup> Each contractor was also required to provide in its proposal its estimated costs for contractor-furnished parts and materials to perform the contract (CLINs 0002AA, 1002AA and 2002AA); however, because these CLINs were estimated cost-reimbursable items, these costs were not to be considered as one of the evaluation factors for award.

Only two firms, Moog and Texas Aerospace Services (TAS), submitted proposals by the August 1, 1989, closing date for receipt of proposals. Initial proposals showed that while TAS' prices for the three fixed-price line items for maintenance and overhaul were significantly lower than Moog's proposed prices, its estimates for the cost-reimbursable line items were much higher than Moog's. Because the contracting officer was concerned about the significant disparity in prices and cost estimates between the TAS and Moog proposals, the contracting officer held discussions with each offeror. After discussions, when best and final offers (BAFO) were submitted, each offeror remained firm on its prices and costs as initially proposed. Since TAS had submitted the lowest firm, fixed-price line items, presenting the government with the lowest total cost for performing the contract, the contract was awarded to TAS on October 2, 1989.

In its initial protest, Moog argued that because it had been performing all UH-60 overhaul and maintenance contracts since September 30, 1987, it was more qualified than TAS to perform the contract, and accordingly should have been chosen for award. Moog also protested that the estimated cost-reimbursable line items should have been part of the RFP's evaluation factors for award. Additionally, Moog contended that since it had been the original equipment manufacturer (OEM) and sole-source contractor, TAS, by virtue of its inexperience, was not qualified to perform the RFP. Finally, because of the significant discrepancy between TAS' firm, fixed-price and cost-reimbursable CLINs, Moog maintained that TAS had "incorrectly interpreted" the cost-reimbursable requirement and had misallocated some of its overhaul and maintenance

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<sup>1/</sup> In addition to these CLINs, the RFP stated that award was to be based upon evaluation of three other factors, not at issue in the initial protest or in Moog's request for reconsideration: (1) the cost of a product verification audit; (2) transportation costs; and (3) rental value of government-owned property proposed to be used by an offeror.

costs to the contractor-furnished parts estimate. Since we do not consider it appropriate to review a protest that an agency should procure services from a particular firm on a sole-source basis, see Marker-Modell Assocs., B-215049, May 25, 1984, 84-1 CPD ¶ 576, and because Moog did not object to the evaluation factors prior to the RFP's closing date, even though they were clear from the face of the solicitation, we dismissed these portions of Moog's protest. Additionally, since we determined that the RFP's specifications are performance requirements rather than definitive responsibility criteria, and because we will not review an agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the agency's part, we also refused to review Moog's protest challenging TAS' responsibility. See 4 C.F.R. § 21.3(m)(5) (1990).

With respect to the rest of Moog's protest, we denied it on the merits. Because the record showed that the agency had evaluated each proposal strictly in accordance with the RFP's evaluation criteria, we held that award to TAS was proper. See Ingersoll-Rand Co., B-224706, B-224849, Dec. 22, 1986, 86-2 CPD ¶ 701. We also held that since TAS had explained the high cost of its estimates for the contractor-furnished parts to the satisfaction of the contracting officer during discussions, there was no basis for Moog's contention that TAS had incorrectly interpreted this requirement.

On reconsideration, Moog first argues that we should have reviewed its challenge to the agency's affirmative responsibility determination because AVSCOM failed to provide "objective evidence" of TAS' current responsibility. Moog cites several decisions in support of its contention, including Personnel Decisions Research Inst., B-225357.2, Mar. 10, 1987, 87-1 CPD ¶ 270 and Topley Realty Co., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. The cases cited are inapposite, however, since they involve an agency's technical evaluation of proposals or application of definitive responsibility criteria, matters which we do review. In contrast, Moog's protest involved a challenge to the agency's affirmative responsibility determination in the absence of any definitive criteria, a matter not for our review under the circumstances here.

Moog also claims to have discovered new factual evidence that TAS does not have the means in place to perform the contract. Moog states that TAS has not yet ordered either the RFP's required mandatory replacement parts nor any assembly testing equipment.

In essence Moog is simply reiterating its challenge to the agency's affirmative responsibility determination. In any event, a contractor's delayed performance, by itself, does not establish that the agency's responsibility determination, made at the time of award, was improper. See Skyline Prods.--Second Request for Recon., B-231775.3, Mar. 2, 1989, 89-1 CPD ¶ 220. Moreover, we note that the record indicates that the delay in TAS' performance is a direct result of Moog's delay in supplying TAS with either quotes or parts for which Moog is the OEM.

Moog also maintains that we failed to address one of the issues it raised in its initial protest. Specifically, Moog states that we did not consider its arguments pertaining to overhaul of one of the assemblies' components, referred to by Moog as a servovalve. Moog is mistaken.

In its initial protest, Moog argued that because of its experience in overhauling servovalves, it was more qualified than TAS to perform the assembly maintenance and accordingly was the more appropriate candidate for award. Despite this claimed technical benefit, we held that since experience with overhauling servovalves was not one of the RFP's evaluation factors for award, the agency properly did not consider Moog's claimed technical superiority when evaluating the proposals for award.

On reconsideration, Moog now states that "[i]t should be noted that TAS has asked Moog to quote 25 each new servovalves as replacement parts because they cannot repair them." By this statement, Moog appears to be implying that either TAS plans to replace rather than repair the servovalves as required by the RFP, or that because of its use in a replacement scheme, the servovalve constitutes a mandatory replacement part which should have been included by TAS in its firm, fixed-price CLINs.

Although Moog has made the assumption that by ordering 25 servovalves TAS intends to replace rather than repair the component part, the record persuades us to the contrary. This procurement calls for maintenance and overhaul of at least 160 helicopter pitch trim actuator assembly units and allows for repair of up to a maximum 580 units. By quantity alone, TAS' order represents such a small portion of the number of assemblies being serviced that we see no basis for assuming that TAS intends to circumvent the RFP's maintenance requirement. Additionally, in its agency report, AVSCOM asserts that "it is likely that some of the [servovalves] will need to be replaced" because their condition may be beyond repair. According to AVSCOM, TAS'

decision to order the 25 servovalves "does not evidence an inability to perform the overhaul and repair portions of the contract." Finally, TAS itself has stated that although it has ordered 25 servovalves as a precautionary measure, the parts "may or may not be required" in performing the assembly maintenance and overhaul.

Similarly, we fail to see how the servovalve can be classified as a mandatory replacement part. The mandatory replacement parts which must be included under the firm, fixed-price CLINs are clearly listed in table 2-4 of the Depot Maintenance Work Requirement for the Pitch Trim Actuator Assembly, DMWR 55-1650-385, which was incorporated into the RFP. None of the parts comprising the servovalve appears in this table. The fact that TAS may use one of the servovalves ordered in the event that a current part is worn beyond repair does not in any way indicate that the servovalves should be regarded as mandatory replacement parts under the RFP.

On reconsideration, Moog has essentially reiterated its original protest arguments which we have already considered and rejected. Moog has presented no argument or information establishing that our prior decision is legally or factually erroneous, see 4 C.F.R. § 21.12(a), and its mere disagreement with our judgment forms no basis on which to reconsider our prior decision. Container Prods. Corp.--  
Reconsideration, B-232953.2, Mar. 8, 1989, 89-1 CPD ¶ 254.

The request for reconsideration is denied.

*for*   
James F. Hinchman  
General Counsel