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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southwest Decor, Inc.--Reconsideration

File: B-246964.3; B-246965.3

Date: June 4, 1992

Katharine R. Boyce, Esq., and Timothy Mills, Esq., Patton, Boggs & Blow, for the protester.
Jeffrey P. Goldstein, for Commercial Drapery Contractors, Inc., an interested party.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

DECISION

Southwest Decor, Inc. requests that we reconsider our decision, Southwest Decor, Inc., B-246964 et al., Apr. 20, 1992, 92-1 CPD ¶ . In that decision, we agreed with the protester that the Department of the Navy failed to comply with the Federal Acquisition Regulation (FAR) procedures for ordering from the Federal Supply Schedule (FSS) in issuing a delivery order for drapes to Commercial Drapery Contractors, Inc. (CDC). We also found that, since Southwest was given a reasonable opportunity to have its comparable fabric considered for award, it was not prejudiced by the Navy's actions. Southwest argues that our decision did not consider its argument that the Navy prejudiced Southwest and restricted competition by specifying the CDC-9057 fabric as "brand name only" without ever specifying the salient characteristics of the CDC-9057 "brand name" product essential to the agency's needs.

We deny the request for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1992); R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Southwest, in a supplement to its initial protest, argued that the Navy failed to provide for full and open competition by its use of a brand name description for the draperies that: (1) specified only one particular drapery fabric--CDC-9057/Blue which is unique to CDC; and (2) did not permit the consideration of equal items. Southwest maintained that the Navy failed to identify the salient or performance characteristics of the drapery fabric that would fulfill the government's minimum needs, and that could be met by alternate drapery manufacturers.

This procurement, however, was not conducted under the sealed bidding or negotiating procedures of the FAR (parts 14 and 15, respectively), upon which the protester's arguments and the authorities it cites concerning "brand name" specifications are based. The procurement was conducted under the FSS provisions of FAR subpart 8.4. In such circumstances, the requirement for full and open competition is met when orders from a multiple award schedule are placed pursuant to the procedures of FAR § 8.405-1. See FAR § 6.102(d)(3).

As stated in our prior decision, an agency ordering from an FSS is required to order from the lowest priced vendor unless it can justify purchasing from a higher priced vendor. To determine the lowest price available, the ordering activity must review at least three schedule price lists. FAR § 8.405-1(a). The record did not contain any evidence that the Navy ordering activity, prior to selecting the CDC fabric, reviewed any price lists other than CDC's. Because of this we found that the Navy failed to comply with the FAR procedures for ordering from the FSS. Despite this failure, we found that Southwest was not prejudiced by the Navy's improper actions because it had been given a reasonable opportunity to have its comparable fabric considered for award. The protester has provided no reason for us to reconsider this conclusion.

The request for reconsideration is denied.


James F. Hinchman
General Counsel