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Comptroller General
of the United States
Washington, D.C. 20548

4.016

Decision

Matter of: Zodiac of North America, Inc.--
Reconsideration

File: B-254428.3

Date: May 31, 1994

DECISION

Zodiac of North America, Inc. requests that we reconsider our decision, Nautica Int'l, Inc., B-254428, Dec. 15, 1993, 93-2 CPD ¶ 321, sustaining a protest against the issuance of a delivery order under Federal Supply Schedule (FSS) Contract No. GS-07F-3385A, to Zodiac. We found that the agency failed to clearly state its minimum needs, thereby misleading the protester into offering a more expensive model, when one of its lower-cost models would have satisfied the agency's minimum needs. In its request for reconsideration, Zodiac argues that the model boat which Nautica offered in response to the agency's request for a quote is not on Nautica's FSS contract, and thus that Nautica was not an interested party to maintain a protest challenging the award to Zodiac.

We deny the request for reconsideration.

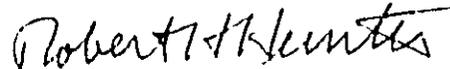
As a preliminary matter, we question whether Zodiac is entitled to request reconsideration given that Zodiac expressed no interest in the case until its letter dated October 15, 1993, submitted a month after submission of the agency report and nearly 2 weeks after the record was closed on October 4. See 4 C.F.R. § 21.12(a) (1994) (party who did not participate in the original protest is not entitled to request reconsideration).

Nor is it clear why Zodiac waited until after a decision was issued before challenging Nautica's status as an FSS contractor. Zodiac states that the information on which the reconsideration request is based--that the model which Nautica offered to the Navy was not listed on its FSS--came to its attention during the course of another protest filed by Nautica challenging an award to Zodiac (B-254906). Zodiac does not indicate what documents made available to it during that protest revealed the information regarding Nautica's FSS contract which Zodiac now offers. However, our records indicate that Nautica withdrew the protest on November 8, 1993, after the agency report was filed on October 25. Thus, we see no reason why, if it felt this

information was relevant, Zodiac could not have provided it in a timely manner during consideration of this protest.

In any event, Zodiac provides no basis for reconsidering our decision sustaining the protest. As Zodiac acknowledges, the Navy is not a mandatory user of the FSS; thus, whether the boat Nautica offered in response to the Navy's query was on its FSS is irrelevant since the Navy is not limited to purchasing off the FSS. Rather, as we stated in our initial decision, once the Navy invited competition by asking firms to submit quotes, it had an obligation to describe its needs accurately so that all vendors could compete on a common basis. The Navy violated this obligation here by failing to provide an accurate description of the type of boat-- specifically, the length--that it was seeking.

The request for reconsideration is denied.



Robert P. Murphy
Acting General Counsel

¹As noted above, the decision sustaining Nautica's protest in this case was issued on December 15, 1993.