



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pilkington Aerospace, Inc.--Reconsideration

File: B-259173.2

Date: May 15, 1995

David P. Metzger, Esq., Mark D. Colley, Esq., and Laura Gasser, Esq., Davis, Graham & Stubbs, for the protester. Michael A. Nemeroff, Esq., Gary P. Quigley, Esq., and Richard L. Larach, Esq., Sidley & Austin, for Sierracin/Sylmar Corporation, an interested party. Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requesting party either expresses disagreement with decision, reiterates arguments raised during initial protest, or raises arguments that could have been raised during the initial protest.

DECISION

Pilkington Aerospace, Inc. requests reconsideration of our decision denying its protest against the award of a sole-source contract to Sierracin/Sylmar Corporation under request for proposals (RFP) No. F09603-94-R-22417, issued by the Department of the Air Force for 325 quick replacement windshields for the F-15 aircraft, models A through E.

We deny the request for reconsideration.

In November 1990, Sierracin submitted an unsolicited proposal to the Air Force for a quick replacement windshield with increased birdstrike resistance. Sierracin learned of the Air Force's interest in obtaining such a windshield at an industry meeting with the Air Force in which both Sierracin and Pilkington participated. In July 1992, Sierracin was awarded a sole-source contract to develop and test the windshield and in February 1994, Sierracin was awarded a follow-on contract for 10 "Spare Replacement" windshield assemblies. Both solicitations were synopsized in the Commerce Business Daily (CBD) in an announcement that included note 22, a standard note stating that while the proposed contract was for supplies or services for which the government intended to solicit and negotiate with only one source, any interested person could identify its interest and capability to respond to the requirement, and all

proposals received within 45 days after the CBD notice would be considered for the purpose of determining whether to conduct a competitive procurement. No offeror other than Sierracin responded to the notice.

The protested solicitation was synopsisized in the CBD in July 1994, for 35 units and award was made to Sierracin. Later, the Air Force learned that it had additional funding available and without revising the CBD notice, amended Sierracin's contract to require 325 units. The Air Force justified the sole-source awards under 10 U.S.C. § 2304(c)(1) (1994), which authorizes the use of other than competitive procedures when the supplies or services needed by the agency are available from only one or a limited number of responsible sources and no other product will satisfy the agency's needs.

Pilkington protested that the Air Force's decision to award the sole-source contract to Sierracin was improper because Pilkington had products it could offer that would meet the agency's needs for increased birdstrike resistance and replacement in 8 hours or less. Our Office held a hearing on the protest in which Pilkington, the Air Force, and Sierracin participated. At the hearing, Air Force officials testified that there were currently no windshields in stock and that the Air Force needed 350 to cover the 2-year period it would take to qualify a new source and obtain windshields under a competitive procurement. The requirement for 350 windshields was based on a need of 65 per year for field use and 110 per year for field-level depot maintenance. The 2-year time period included the time for various tests the windshield would be required to undergo to obtain approval, including a 12-month flight test, and the time necessary to conduct a competitive procurement. Pilkington representatives testified that while the firm was currently working on windshields that would meet the agency's needs, it would be approximately 4 months until it completed development of any of these products. Based on Pilkington's estimate of the amount of time it would take Pilkington to complete the development of its product, plus the Air Force's estimate of the time it would take to qualify Pilkington's windshields and obtain windshields under a competitive procurement, we agreed with the Air Force that Pilkington was not capable of meeting the Air Force's needs within the 2-year time period. On reconsideration, Pilkington challenges our conclusion.

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) (1995). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard. Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. Nor will we reconsider a decision based on information or arguments that could have been presented during the initial protest, but were not. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. Pilkington has not met the standard for reconsideration of our decision here.

Pilkington argues that our decision is legally incorrect because the Air Force never identified any circumstance that required it to have 350 windshields (175 windshields per year), delivered over the next 2 years. Rather, asserts Pilkington, the 350 units will be used to retrofit planes during routine program maintenance, not to keep aircraft operational, and thus are not needed within the 2-year time period. This is an argument that Pilkington did not make during consideration of the original protest despite the fact that the agency explained in its report and at the hearing the basis of its need for 175 units per year. In fact, in the comments Pilkington submitted in response to the agency report, Pilkington specifically disputed the agency's need to purchase 350 windshields to cover a 2-year period based on its belief that the Air Force needed only 85 units per year for depot maintenance.¹

Similarly, Pilkington was aware that the Air Force was claiming that it had to purchase the windshields in part because its stock was depleted. Therefore, Pilkington could have argued during the original protest that the Air Force did not explain why replenishing the stock quickly with the redesigned windshield is a requirement justifying a noncompetitive approach.

Pilkington also argues that the fact that there are no windshields in stock does not justify the sole-source award, because the Air force created the stock shortage by intentionally depleting its stock in anticipation of obtaining replacement windshields from Sierracin, and because replacement windshields are readily available from Pilkington. In addition, Pilkington argues that one version of the windshield it could offer should not be required to undergo 12 months of flight testing because its current windshield has already undergone flight testing. These arguments are no more than reiterations of arguments raised

¹We note that of the 175 windshields required per year, 65 are for field use to replace damaged and defective windshields.

during the original protest and disagreement with our conclusions regarding those arguments. Accordingly, they do not provide a basis for reconsideration.² Dictaphone Corp.--Recon., supra.

Next, Pilkington argues that there is some information available which indicates that despite inclusion of a requirement in the solicitation for increased birdstrike resistance--i.e., that the windshield withstand a 500-knot birdstrike by a 4-pound bird--the Sierracin windshield does not offer significantly greater birdstrike resistance than the existing Pilkington windshield. This argument does not provide a basis for us to reconsider our decision. Increased birdstrike resistance is not the only requirement for the new windshield and our decision was not premised on Sierracin's ability to meet this requirement alone. In any case, the agency established the 500-knot birdstrike resistance capability as its requirement and Pilkington did not challenge that requirement during the protest.

Pilkington also protested that the award to Sierracin was improper because the windshield developed by Sierracin does not meet the Air force's needs for compatibility with the Heads Up Display (HUD).³ The statement of work for the HUD required Sierracin to provide windshields that complied with McDonnell Douglas optical specification 21232, which includes requirements for angular deviation, and the interface of the HUD and the windshield. After the contract was awarded to Sierracin, the Air Force began to question the current specification and how angular deviation is measured. As late as the time when the agency submitted its hearing comments, however, the Air Force stated that


²Pilkington also argues that our decision is erroneous to the extent that we state that Pilkington should have sought to have its product qualified earlier. Pilkington asserts that this assumes it could have obtained the statement of work from Sierracin's initial development contract. Pilkington argues that it was not interested in competing for the development contract and that there are valid reasons why it wanted to develop the windshield on its own rather than under government contract. The statement to which Pilkington refers was included in our decision not to suggest that Pilkington was required to develop its windshield under government contract, but rather to explain that Pilkington would have needed to have its part qualified to be able to timely compete for the contract in issue.

³The HUD displays flight and target information on a transparent combiner glass which is mounted within the pilot's immediate field of vision allowing the pilot to see the information while looking outside the aircraft.

although it was in the process of revising the specification, that process had not been completed, and the current requirement was that the Sierracin windshield meet specification 21232. Since Sierracin's windshields meet that requirement, we denied Pilkington's protest that the Sierracin product did not meet the agency's requirements.

On reconsideration, Pilkington argues that Sierracin's product does not meet the agency's requirements--and thus that a sole-source award to Sierracin is not warranted--because specification 21232 does not meet the agency's needs regarding angular deviation. This argument--that Sierracin is not meeting the agency's needs because the Air Force did not accurately state them--is a new and different basis of protest than the issue that was raised and considered in the original protest--whether Sierracin met the needs of the Air Force as stated in the solicitation. We will not reconsider our decision based on a new ground of protest that was not otherwise timely raised.⁴ See Earle Palmer Brown Cos., Inc.--Recon., B-243544.3, Mar. 2, 1992, 92-1 CPD ¶ 246.

The request for reconsideration is denied.


 Robert P. Murphy
 General Counsel

⁴Under our Bid Protest Regulations, to be timely, a protest based on an impropriety that is apparent from the face of the solicitation must be filed prior to the closing time for the receipt of proposals. 4 C.F.R. § 21.2(a)(1). Other protest issues must be filed within 10 working days after the protester knows or should know the basis of protest. 4 C.F.R. § 21.2(a)(2). This basis of protest is not timely under either standard since it was filed after the closing time for the receipt of proposals and more than 10 working days after February 16, 1995, the date on which the protest hearing took place, and the latest date on which Pilkington could have learned that, with respect to angular deviation, the Air Force would not require compliance with any specification other than 21232.