

McAuliffe



Comptroller General
of the United States

225126

Washington, D.C. 20548

Decision

Matter of: Bulk Barge Transport, Inc.--Reconsideration
File: B-258285.2; B-258701.2; B-258702.2
Date: June 13, 1995

DECISION

Bulk Barge Transport, Inc. requests reconsideration of our December 27, 1994, dismissal of its protest of the award of contracts under request for proposals (RFP) Nos. 211-048-09, 211-048-12, and 211-048-15, issued by the U.S. Agency for International Development (AID) for delivery of bulk tallow to Nicaragua.

We deny the request for reconsideration because the request provides no basis for reconsidering our prior decision.

Bulk Barge, in its original protests to our Office, contended that it should have received the award of the contracts since it offered a U.S.-flag vessel to meet the RFPs' requirements; the awards were made to offerors with substantially lower-priced non-U.S.-flag vessels. Bulk Barge challenged the agency's determination that AID had satisfied minimum U.S.-flag shipment requirements. Bulk Barge principally argued that AID incorrectly interpreted cargo preference laws and regulations as allowing compliance with minimum U.S.-flag shipment requirements on a yearly basis by program, vessel type, and geographical area. The protester contended that compliance must be measured on a country-by-country and transaction-by-transaction basis.

In response to the protests, AID provided data showing that the agency was in compliance with the applicable 75-percent U.S.-flag vessel shipping requirement. Although AID contended that it was not required to determine compliance on the more restrictive bases presented by the protester, the agency provided data to show that the agency's shipping contracts, including the protested procurements, complied with the protester's requested measurement standards. Specifically, AID's shipping data showed that under the relevant program, 90.8 percent of all tanker tonnage of shipments utilized U.S.-flag vessels and 78.2 percent of the shipments to Nicaragua were transported on U.S.-flag vessels. The data showed that each transaction (*i.e.*, contract) was considered by the agency in calculating the percentages. In its comments submitted in response to the

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agency's reports, Bulk Barge did not rebut the agency's shipping data; rather, the protester continued to challenge the agency's interpretation of the proper procedure for determining compliance with the cargo preference requirements.

We dismissed Bulk Barge's protest of AID's compliance with the challenged cargo preference requirements, without deciding Bulk Barge's challenge of AID's interpretation of the proper procedure for determining compliance with the cargo preference requirements.¹ The protester had failed to rebut the agency's shipping data--which data demonstrated the agency's compliance with the protester's requested bases of calculating the shipping percentages (*i.e.*, on a country-by-country basis considering each transaction.)²

On reconsideration, Bulk Barge provides shipping data it first sought after the dismissal of its protests. Bulk Barge contends this newly submitted data refutes the accuracy of AID's data submitted during the protest. Bulk Barge again requests that our Office resolve the issue of

¹In that decision, we also dismissed as untimely Bulk Barge's challenge to the agency's compliance with the "Fix American-flag Tonnage First" regulation, at 46 C.F.R. § 381.5 (1994), on the basis that the protester should have questioned prior to the closing time for receipt of proposals the applicability of the regulation (which refers to full shiploads) based upon the cargo quantity information in the solicitations. 4 C.F.R. § 21.2(a)(1) (1995). The protester argues in its reconsideration request that the issue was timely raised by the firm because the regulation was cited in two of its protests and that our Office was incorrect in finding that Bulk Barge first raised the issue in its comments on the agency's protest reports. These arguments provide no basis for reconsidering the dismissal of this issue. We note that Bulk Barge merely cited the regulation in the last two of its three protests; the protester, however, did not explain the protest basis until it filed its comments in response to the agency's reports. The protests, as filed, thus also did not meet the requirement for sufficient elaboration of the basis of protest. 4 C.F.R. § 21.1(c)(4). Moreover, the protester's failure during the protests to rebut the agency's shipping data that showed compliance on the bases sought by the protester equally warrants dismissal of this protest contention.

²In our prior decision, we dismissed Bulk Barge's contention that each transaction individually must meet the 75-percent standard since the protester provided no legal support for its position. 4 C.F.R. § 21.1(c)(4).

whether or not AID has correctly determined its compliance with cargo preference laws and regulations.

The protester repeats arguments it made previously, expresses disagreement with our decision, and untimely submits data to support its protest grounds. Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain 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). The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Failure to timely rebut evidentiary submissions, make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of both parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. See The Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546.

The shipping data first submitted by Bulk Barge in its reconsideration request is untimely submitted for purposes of resolution of the original protest and thus provides no basis for reconsideration of our decision.³ Our Bid Protest Regulations, 4 C.F.R. Part 21, provide for decisions to be based on the record submitted during the pendency of a protest and do not contemplate, as Bulk Barge now states it anticipated, our independent investigation of the accuracy of data presented by a party during a protest. The protester has the obligation of presenting its own case; any rebuttal to the agency's data was required to be submitted by the protester during the protests. See Controls Eng'g Maintenance Corp., B-247833.2, Sept. 25, 1992, 92-2 CPD ¶ 204; William B. Hackett & Assocs., Inc., B-232799, Jan. 18, 1989, 89-1 CPD ¶ 46.

The request for reconsideration is denied.

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³We note that the protester's data (which is publicly available information) encompasses a period of time extending months after the agency's data was compiled and thus may include information not available to the agency for consideration at the time of the challenged contract awards.