

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-184062

DATE: July 6, 1976

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MATTER OF: J. H. Rutter Rex Manufacturing Co., Inc.--
Request for Reconsideration

DIGEST:

1. Where request for reconsideration of GAO decision merely restates protester's original arguments without demonstrating errors of fact or law, decision is affirmed.
2. Protest that "should cost" range of durable press garment was arbitrary because agency lacked experience in purchasing item is denied, since "should cost" was based on prior procurement price with adjustment made for additional cost due to specification change to require durable press curing operation based on average of quotations therefor from supplier sources.
3. Protester's argument that added economic risk of expanded first article small business set-aside solicitation assumed by small business contractors was equally applicable to it (as large business) is unpersuasive, since protester's bid is per se nonresponsive and contracting officer was therefore not required to consider it.

By letter dated March 26, 1976, J. H. Rutter Rex Manufacturing Co., Inc. (Rutter-Rex), requested reconsideration of our decision J. H. Rutter Rex Manufacturing Co., Inc., B-184062, March 17, 1976, 55 Comp. Gen. _____, 76-1 CPD 182, in which we denied Rutter-Rex's protest against the small business set-asides of Defense Supply Agency (DSA) invitations for bids (IFB's) DSA100-75-B-1114 and -1121 for durable press shirts and trousers.

Rutter-Rex's request for reconsideration lists eight points of disagreement with our decision. However, points one through five and eight merely restate arguments previously advanced by Rutter-Rex and answered in our decision. The standard to be applied in considering requests for reconsideration is whether the request clearly demonstrates errors of fact or law in our decision. Shippers

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Packaging and Container Corporation--Requests for Reconsideration, B-184488, January 29, 1976, 76-1 CPD 59. Since Rutter-Rex has merely restated its arguments and has not demonstrated errors of fact or law, our decision with regard to these aspects of Rutter-Rex's request for reconsideration is affirmed.


In its sixth point of disagreement, Rutter-Rex contends that our decision is based on the fact that under IFB -1114 the contracting officer determined the successful bids to be reasonable because they fell within the "should cost" range of DSA's price analysis. Rutter-Rex questions the validity of this finding alleging that the "should cost" range is arbitrary in view of "the absence of any experience." We assume that Rutter-Rex is referring to the fact that DSA had not previously purchased shirts with a durable press treatment.

However, the "should cost" for the shirts was based on the prior procurement price with an adjustment being made for the additional cost due to the specification change to require the durable press curing operation based on an average of quotations therefor from supplier sources. Thus, although the requirement for durable press was new, we are unable to conclude in the circumstances that the "should cost" was arbitrary.

With regard to its seventh point, Rutter-Rex contends that the added economic risk assumed by small business contractors because of the expanded first article nature of the instant solicitations was equally applicable to it as a large business. Rutter-Rex goes on to state that "[t]he Rutter-Rex bid was nevertheless low."

As we noted in our original decision, as other than a small business Rutter-Rex was ineligible to receive award for the subject procurements, which were small business set-asides. As Rutter-Rex's bids were per se nonresponsive, the contracting officer was not required to consider them. Thus, in view of that fact that Rutter-Rex submitted nonresponsive bids we find Rutter-Rex's argument in this regard to be unpersuasive.

Accordingly, the decision of March 17, 1976, is affirmed.

Deputy;  Comptroller General
of the United States