

DECISION

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

FILE: B-206513.3

DATE: October 1, 1982

MATTER OF: Beacon Winch Company -- Reconsideration

DIGEST:

Request for reconsideration that presents arguments and facts which were previously considered and rejected or information which was known to protester and could have been presented in connection with original protest is denied. Protester will not be permitted to remedy defects in original protest by presenting its position piecemeal and avoid the consequences of its failure to meet burden of affirmatively proving its position.

Beacon Winch Company requests reconsideration of our decision in Beacon Winch Company, B-206513.2, May 18, 1982, 82-1 CPD 478. Beacon had challenged the responsibility of Teppert Tool & Engineering to perform a contract for the manufacture and delivery of winches under invitation for bids No. DAAE07-82-B-A022 which was issued by the Department of the Army. We dismissed the initial protest because our Office does not review affirmative determinations of responsibility made by the contracting officer unless there is a showing of possible fraud on the part of the procuring officials or the solicitation contained definitive responsibility criteria which allegedly had not been applied. There were no definitive responsibility criteria and we did not accept Beacon's characterization of the Army's actions as being tantamount to fraud.

Section 21.9(a) of our Bid Protest Procedures, 4 C.F.R. Part 21 (1982), requires that a request for reconsideration contain a detailed statement of the factual or legal basis which allegedly warrant reversal of our prior decision specifying any errors of law or information not previously considered by our Office. Information not previously considered means information which the protester

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believes may have been overlooked by our Office or information to which it did not have access during the pendency of the original protest (such as additional facts subsequently obtained under the Freedom of Information Act). B & M Marine Repairs, Inc.--Request for Reconsideration, B-202966.2, February 16, 1982, 82-1 CPD 131. In cases where the information and explanations were known to the protester before or during the development of its protest but were not presented at that time, we will not consider such information and explanations upon its request for reconsideration. For us to do so would enable the protester to remedy defects in its original protest, to present its position piecemeal, and to avoid the consequences of failing to meet the burden of affirmatively proving its position in a timely fashion. Habitation Technology, Inc.,--Reconsideration, B-205011.2, February 9, 1982, 82-1 CPD 117.

In its request for reconsideration, Beacon reiterates its allegation that the actions of the contracting officer were tantamount to fraud and attempts to support its position by reference to various provisions of the Defense Acquisition Regulation which it contends shows that the contracting officer failed to comply with certain mandatory procedures before making its determination that Teppert was responsible. Although Beacon's arguments based on these provisions are more elaborate in its request for reconsideration, they were referred to in its initial protest and they were considered by our Office.

Beacon has also submitted a pre-award survey report, dated July 13, 1981, recommending no award be made to Teppert under another solicitation. This document was referred to in the original protest, but was not furnished to this office.

In the original protest, Beacon noted that Teppert declined to seek a Certificate of Competency from the Small Business Administration. Beacon suggested that the agency failed to conduct a pre-award survey of the low bidder on the current solicitation "in view of" the prior nonresponsibility determination and concluded that this action was tantamount to fraud. We considered the point initially; the document itself which Beacon now furnishes, adds nothing to the substance of Beacon's position.

Beacon has also submitted a copy of the contracting officer's statement concerning the negative pre-award survey on the prior solicitation which was the subject of another protest to this Office. The contracting officer's statement purports to show that the contracting officer had sufficient knowledge of Teppert's lack of responsibility as to require him to obtain a pre-award survey prior to making an affirmative responsibility determination. As we stated in the original decision, however, pre-award surveys are not required as a prerequisite to an affirmative determination of responsibility. The conduct of a pre-award survey is within the discretion of the contracting officer, since the contracting officer is in the best position to assess responsibility and must bear the consequences of any difficulties experienced in contract performance. Cf., Jack Roach Cadillac--Request for Reconsideration, B-200847.3, August 23, 1981, 81-2 CPD 183 (a case dealing with the nature and extent of a pre-award survey performed on the low bidder).

We will not now delve into the reasons for the contracting officer's affirmative finding of Teppert's responsibility to determine whether or not he abused his discretion or showed such a willful disregard of the facts as to be tantamount to fraud in finding the firm responsible, because the documents now being urged upon us to support the protester's position and the arguments that flow from them were available to Beacon before the initial protest was filed. There is, therefore, nothing in Beacon's request for reconsideration which was not presented or which could not have been presented in connection with its initial protest.

The request for reconsideration is denied.

Harry R. Chin Case
for
Comptroller General
of the United States