26051

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

FILE: B-209910.2 **DATE:** August 23, 1983

MATTER OF: Pettibone Texas Corporation--Reconsideration

DIGEST:

GAO affirms prior decision where reconsideration request does not show that the decision was erroneous.

Pettibone Texas Corporation (Pettibone) requests reconsideration of our decision in Pettibone Texas Corporation, B-209910, June 13, 1983, 83-1 CPD 649. Our decision denied the company's protest against the rejection of its proposal as outside the competitive range under Federal Railroad Administration (FRA) request for proposals No. DTFR54-82-R-00050 for the purchase of two "container and trailer handling vehicles."

We affirm our decision of June 13, 1983.

In that decision, we held that Pettibone's proposal was properly rejected ultimately as outside the competitive range because Pettibone failed to provide an adequate description of its vehicle's alleged "bottom lift" capability--a capability required by the specifications. We found that the FRA did not act unreasonably in excluding Pettibone's proposal from the competitive range because the bottom lift capability was absolutely required and Pettibone did no more than state its intention to provide this feature even after being asked to provide a more complete description.

Pettibone argues that the record demonstrates that the FRA always deemed its proposal to be within the competitive range. Specifically, Pettibone notes that: (1) Pettibone's initial proposal was not formally determined to be noncompetitive although FRA argues that the proposal "could and perhaps should have been [so] determined"; (2) its proposal was numerically scored although other clearly noncompetitive proposals were not numerically scored; and (3) the company was never informed that its proposal had been determined to be noncompetitive.

In our view, the facts above do not contradict the FRA's position that it ultimately revised the competitive range by eliminating Pettibone's proposal. Facts (1) and (2) do suggest, perhaps, that the FRA evaluators did not fully realize the significance of Pettibone's noncompliance with the bottom lift feature until after proposals had been scored and the record of evaluation had been thoroughly considered. Ideally, this significance should have been discovered earlier in the procurement, but this lack of an ideal evaluation does not show that the FRA, knowing full well the significance of the bottom lift feature, nevertheless considered Pettibone's proposal to be competitive. Moreover, even if the FRA did not discover the significance of this feature until after the award, we cannot conclude (as Pettibone apparently would have us do) that the FRA was thereafter estopped from asserting--retroactively to the date the company failed to adequately describe this feature--the unacceptability of Pettibone's proposal. Finally, the existence of fact (3) suggests only that the FRA overlooked the notice requirement involved.

Pettibone also suggests that FRA's request to Pettibone to describe its bottom lift capability was an "unsupported, stale recollection of a conversation"; nevertheless, Pettibone, having the burden of proof, has neither claimed nor shown that the FRA did not make the request; therefore, the company's suggestion provides no basis to reverse our prior decision.

Prior decision affirmed.

Harry R. Van Cleve
for Comptroller General
of the United States