

DECISION



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

FILE: B-213059.2

DATE: July 9, 1984

MATTER OF: Intercomp Company--Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where the protester has not shown any error of fact or law which would warrant reversal of the decision.

Intercomp Company requests reconsideration of our decision, Intercomp Company, B-213059, May 22, 1984, 84-1 CPD ¶ 540, denying its protest against the Department of the Navy's cancellation of a solicitation for portable aircraft weighing scales. We held that, even though the Small Business Administration had issued Intercomp a certificate of competency to perform the contract, the contracting agency properly canceled the solicitation because the specifications did not adequately describe the agency's needs.

In requesting reconsideration, the protester, who submitted the lowest price in response to the solicitation, basically repeats its original contention that the defects in the specifications were minor and did not provide a proper basis for cancellation. Intercomp also poses two additional bases for reconsideration. The first is that the Navy, in responding to the protester's submissions, failed to file its comments within the time limitations prescribed by our Bid Protest Procedures, 4 C.F.R. part 21 (1984). The second basis is that in finding reasonable the Navy's position that the solicitation's specifications were materially defective, we failed to address the agency's alleged willingness to make award to another bidder under the original solicitation anyway.

We affirm our prior decision.

Our Office will not reverse or modify a decision unless a protester's request for reconsideration specifies information not previously considered or

029380

B-213059.2

shows that errors of law exist in the decision. 4
C.F.R. § 21.9(a). Intercomp's reargument of the same
points we considered in connection with the original
protest does not meet this burden. See Culp/Wesner/Culp
-- Reconsideration, B-212318.2, March 26, 1984, 84-1 CPD
¶ 346.

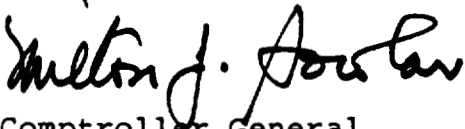
Regarding the timeliness of the Navy's comments,
we have held that under our current procedures the
late receipt of a contracting agency's comments or
supplemental submissions does not provide a basis to
disregard the substantive information therein, Systems
Consultants, Inc., B-187745, Aug. 29, 1977, 77-2 CPD
¶ 153, or to sustain a protest on the basis of an
inadequate record. See C. R. Hipp, Inc., B-212093,
Oct. 4, 1983, 83-2 CPD ¶ 418.

As to Intercomp's final basis for reconsideration,
we pointed out in our decision that the Navy's project
engineer advocated making an award to the third low
bidder notwithstanding the deficient specifications,
based on that firm's previously having supplied
acceptable scales. The project engineer explained his
position in a letter to the purchasing activity dated
September 29, 1983, as follows:

"The subject weighing systems were . . .
urgently needed because of the rapidly
declining condition of existing scales,
plus a recent major increase in the re-
quired number of aircraft weighings. . . .
Aware of the urgent need for delivery and
knowing that negative preawards had been
recommended [I] did not recommend canceling
the solicitation on the naive assumption of
a technical evaluator that award would be
made to the third low bidder and this would
be the least time-consuming way to pro-
ceed. We knew there were several existing
weighing systems, including some in our
present inventory, and bid by the third low
bidder which could meet our requirements.
. . . Had we known at the time that a
negative . . . preaward [survey] may not
preclude award, we would have recommended
cancellation at that time."

Thus, by the project engineer's own admission, his belief that an award could be made under the original solicitation to the third low bidder because that firm presumably was offering acceptable scales anyway, was "naive." We also note the project engineer only served as a technical representative on the preaward survey team. The project engineer's initial opinion simply does not establish that award to Intercomp based on a bid response to defective specifications would have been proper.¹

The prior decision is affirmed.

for 
Comptroller General
of the United States

¹We did criticize the procurement officials, however, for not canceling the solicitation promptly, and instead inducing Intercomp to go through the certificate of competency process only to have its bid rejected after being certified responsible.