**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Liebig International, Inc.; Defense Logistics Agency--Reconsideration

File: B-265662.2; B-265662.3

Date: March 28, 1996

Hiltrud J. McInturff, Liebig International, Inc., and Robert L. Mercadante, Esq., Defense Logistics Agency, for the requesters.
Alison L. Doyle, Esq., McKenna & Cuneo, for Hilti, Inc., an interested party.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Requests for reconsideration purporting to demonstrate equivalency of alternate expansion shield to brand name expansion shield in terms of clamping capability and dynamic performance are denied where basis for initial decision sustaining protest of award to offeror of alternate part was not that alternate part was inferior to brand name part with regard to these attributes, but rather that the agency had not sought to determine the equivalency of the two parts in these two areas, and in fact had overstated its needs by not advising offerors that complete equivalency to brand name item was not required.

DECISION

Liebig International, Inc. and the Defense Logistics Agency (DLA) request reconsideration of our decision Hilti, Inc., B-265662, Dec. 19, 1995, 95-2 CPD ¶ 275, in which we sustained Hilti's protest against DLA's award of a contract for expansion shields to Liebig under request for proposals No. SPO500-95-R-0100. Both parties argue that we overlooked evidence in the record which demonstrates that the Liebig part offered is at least the equivalent of the specified brand name Hilti part.

We deny the requests for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a) (1995). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard. Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. Nor will we consider arguments that could have been, but were not, raised

during our initial consideration of the protest since to do so would undermine the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of the parties' arguments on a fully developed record. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. Neither of the requests here meets the standard for reconsideration of our decision.

In citing evidence purporting to demonstrate that Liebig part No. LAH 34.558 was at least the equivalent of Hilti part No. HSL M12/50 in terms of clamping capability and dynamic performance, both requesters misconstrue the basis for our original holding. We did not find that the Liebig part was inferior to the Hilti part with regard to the aforementioned attributes; we found that the agency--by its own admission--had not sought to determine the equivalency of the two parts in these two areas.[1] We noted that the agency's justification for failing to examine whether the Liebig part was equivalent to the Hilti part in terms of clamping capability and dynamic performance was that these were not significant attributes for purposes of the intended application, runway repair. We concluded that it was improper for an agency that had specified that it would consider only items physically, mechanically, electrically, and functionally interchangeable with the product identified in the solicitation, i.e., the Hilti part, to accept an item that it had not determined to be interchangeable with the named product in all respects. We further concluded that by asking for an item interchangeable with a named product when it did not really require an item with all of the characteristics of the named item, the agency had overstated its needs. None of the information cited by either of the parties in their requests for reconsideration alters the foregoing conclusions.

DLA further argues that we erred in concluding that Hilti might have been prejudiced by the agency's overstatement of its needs. The agency maintains that an anchor from Hilti's lower-priced KwikBolt line--which Hilti claimed it could have offered had it realized that the agency did not require an anchor with the dynamic performance and clamping capabilities of its part No. HSL M12/50--would not meet its minimum needs since the KwikBolt is a stud head (as opposed to an anchor head) bolt, and stud heads have a greater tendency to puncture aircraft tires. The agency also notes that it requires "heavy duty" anchors, while the KwikBolt is merely "medium duty."

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[1]Hilti and Liebig submitted conflicting evidence regarding the alleged equivalency of parts with respect to the clamping capability and dynamic performance attributes. We did not resolve this dispute because the agency had not sought to do so.

DLA never advised us during our consideration of the protest that the type of head on the bolt was significant for purposes of its intended application.[2] Since this argument could have been, but was not, raised during the protest, it does not provide a basis for reconsideration of our decision. Id. Further, although Hilti labels the KwikBolt a "medium duty," as opposed to a "heavy duty," bolt, the bolt has--according to Hilti--tensile and shear capabilities in excess of the minimums defined by the agency; thus, we do not see the significance of the difference in nomenclature used by DLA.

The requests for reconsideration are denied.

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[2]Indeed, as we noted in our decision, DLA never established that runway repair was the application intended by the activities requisitioning the bolts; it merely indicated that it had surmised that this was the intended application since it was the only application of which its contracting personnel were aware.