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DECISION



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

[Request for Reconsideration]

FILE: B-198864

DATE: December 30, 1980

MATTER OF: Communications Company, A Division
of E.F. Johnson Company--
DIGEST: Reconsideration

Prior decision, dismissing protest in part and denying it in part, is affirmed where protester does not show that decision contains any error of fact or law.

Communications Company (Comco), A Division of E.F. Johnson Company, requests reconsideration of our decision in the matter of Communications Company, A Division of E.F. Johnson Company, B-198864, October 22, 1980, 80-2 CPD 309.

Comco submitted the low offer in response to request for quotations (RFQ) No. DAKF31-80-Q-0068 which was issued by the Department of the Army (Army), Fort Devens, Massachusetts, and solicited radios, antennas, and battery chargers to be used by the Fort Devens Military Police. The Army placed the order with Comco under the belief that delivery would be made by February 1, 1980. However, by the first week of March, no delivery had been made. According to the Army, it made a number of telephone calls to Comco's Miami office seeking a status report on its order only to be finally told that Comco had no record of an order from Fort Devens. In addition, the Military Police claimed that Comco's equipment would not be compatible with the existing onbase battery chargers previously purchased from Motorola, Inc. (Motorola). Therefore, on March 7, 1980, the Army terminated the Comco order for the convenience of the Government and notified Comco of this fact.

Shortly thereafter, the Army placed an order with Motorola, Inc., for the same equipment on a sole-source basis. This sole-source award was justified on the grounds that only Motorola's equipment

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was compatible with the battery chargers on hand, and that the Military Police had an urgent need for the equipment, a need which had been aggravated by Comco's failure to deliver on time. However, on April 29, 1980, after Motorola had delivered its equipment, the Fort Devens Property Control Office received a shipment from Comco. The record indicates that Comco was either unaware of the Army's decision to terminate or chose to ignore it. When notified that its equipment was no longer needed, Comco filed a protest with our office arguing that it should receive full payment for the shipment and that the award to Motorola was unjustified.

In our prior decision, we dismissed Comco's protest in part and denied it in part. We held that the Army's decision to terminate the Comco order for the convenience of the Government was a matter of contract administration which our Office would not review and that any claim Comco had regarding the equipment it sent to Fort Devens should be pursued under the contract disputes clause. We also held that the contracting officer's decision to make a sole-source award to Motorola was not unreasonable. Even though on the record presented we could not definitely decide the merits of the respective arguments concerning the compatibility and interchangeability of Comco and Motorola equipment, we found that the award was justified because time was of the essence and only Motorola could meet the Army's needs within the required timeframe.

Under our Bid Protest Procedures, requests for reconsideration must "contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered." See 4 C.F.R. § 20.9 (1980). Requests for reconsideration on the same facts and arguments raised in the original protest are not considered. According to Comco, the termination for convenience of the Government was unfair and the sole-source award to Motorola cannot be justified. But, under the general rule, the protester is required to affirmatively prove its case. Alan Scott Industries, B-197036, March 21, 1980, 80-1 CPD 212. Therefore, the burden is on Comco to present evidence which rebuts the Army's position. Comco, however, has failed to do this. It merely disputes the Army's statement of the facts and restates its earlier arguments. In this connection, we have held

that where the only evidence before us consists of contradictory statements by the protester and the contracting agency, the protester has failed to meet the burden of affirmatively proving its allegations. Downtown Copy Center--Reconsideration, B-193157.2, August 21, 1979, 79-2 CPD 137.

Comco has also requested a conference in order to rebut the Army's version of the facts. However, we do not believe that such a conference would be productive since Comco indicates that it does not intend to present any evidence which has not already been raised in its correspondence.

We conclude, therefore, that Comco has not shown that our prior decision contained any error of fact or law. In light of this, that decision is affirmed.



Acting Comptroller General
of the United States