

DECISION



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

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FILE: B-215091.2; B-213046.6 **DATE:** September 25, 1984

MATTER OF: Simulators Limited, Inc.--Reconsideration

DIGEST:

1. GAO will not consider the merits of a case where protester is not in line for award even if its protest is sustained because protester is not an "interested party" under GAO Bid Protest Procedures.
2. When the only evidence of an issue of fact is a protester's statement which conflicts with that of contracting officials, the protester has not carried its burden of proof.
3. Prior decisions are affirmed on reconsideration where protester has not shown any error of law or fact, which would warrant reversal of those decisions.

Simulators Limited, Inc. (Simulators), requests reconsideration of our decisions in Wing Manufacturing; Simulators Limited, Inc.--Request for Reconsideration, B-213046.3; B-215091; B-213046.5, Aug. 17, 1984, 84-2 C.P.D. ¶ ____.

We affirm our prior decisions.

B-215091.2

We dismissed Simulators' earlier protest, Wing Manufacturing, B-215091, supra, because Simulators was determined to not be an "interested party" as required by our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983). This determination was based on the fact that the agency report stated that Simulators submitted the fourth lowest priced of seven technically acceptable offers and, therefore, Simulators would not have been in line for award if its protest was upheld, because award was to be made to the offeror with the lowest priced technically acceptable offer. See Pluribus Products, Inc., B-210444, Mar. 7, 1983, 83-1 C.P.D. ¶ 226.

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Simulators now contends that it is an "interested party" because no proof exists that the second low offer was technically acceptable. In addition, Simulators states that based upon information given to it, Simulators submitted the third, not fourth, lowest best and final offer.

It is well established that the protester has the burden of proving its case. International Alliance of Sports Officials, B-211755, Jan. 25, 1984, 84-1 C.P.D. ¶ 117. Although the protester states that no proof exists that the second low offer was technically acceptable, the agency report indicates that the second low offer was technically acceptable. When the only evidence on an issue of fact is a protester's statement which conflicts with that of contracting officials, the protester has not carried its burden of proof. Printer Systems Corporation, B-213978, May 22, 1984, 84-1 C.P.D. ¶ 546. Such is the case here.

We need not address Simulators' contention that it submitted the third rather than the fourth lowest priced technically acceptable offer because, in either case, it is not in line for award and, therefore, not an "interested party" under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983). See Donald Harris, B-214124.2, Mar. 1, 1984, 84-1 C.P.D. ¶ 258; Nicolet Analytical Instruments, B-210851, Apr. 26, 1983, 83-1 C.P.D. ¶ 456.

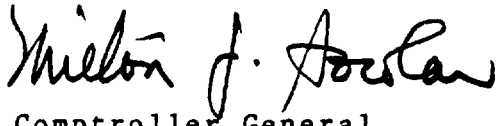
Since Simulators has not shown any error of fact or law in our initial decision, it is affirmed.

B-213046.6

Simulators' earlier reconsideration request, Simulators Limited, Inc.--Request for Reconsideration, B-213046.5, supra, was denied because Simulators did not show any error of fact or law in our initial decision, Simulators Limited, Inc., B-208418.2; B-213046.2, Apr. 23, 1984, 84-1 C.P.D. ¶ 453. In the initial decision, we denied Simulators' argument that it was prejudiced by the fact that the Army sent a request for proposals amendment to all firms originally solicited rather than to only those firms remaining in the competitive range in accordance with Defense Acquisition Regulation, § 3-805.4(b), reprinted in 32 C.F.R. pts. 1-39 (1983), because the record indicated that the Army only considered amended proposals submitted from those in the original competitive range.

Simulators has not offered any evidence that would indicate that those outside the original competitive range were given consideration after the amendment was issued. In fact, Simulators admits that it is unable to prove its allegation.

Because Simulators has not shown any error of fact or law in our earlier decisions, they are affirmed.

for 
Comptroller General
of the United States