

DECISION



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

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FILE: B-219485.2

DATE: July 31, 1985

MATTER OF: Ross Bicycles, Inc.--Request for
Reconsideration

DIGEST:

1. Prior decision is affirmed on reconsideration where protester requesting reconsideration fails to show any error of law or of fact warranting reversal of prior decision.
2. A protester may not successfully raise a new argument in a reconsideration request that it could and should have raised in its original protest, since GAO Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues.

Ross Bicycles, Inc. requests reconsideration of our decision, Ross Bicycles, Inc., B-217179, et al., June 26, 1985, 85-1 CPD ¶ _____, in which we denied in part and dismissed in part Ross' protest concerning request for proposals No. DAAA09-84-R-8607, issued by the Army to acquire M249 Squad Automatic Weapon (SAW) machine guns. We affirm the prior decision.

The technical data package for the SAW procurement was based on the design of another machine gun, the Minimi, developed by a Belgian company, Fabrique Nationale Herstal (FNH). In its original protest, Ross argued that another offeror, Fabrique Nationale Manufacturing, Inc. (FNMI), an American subsidiary of FNH, had a competitive advantage over other offerors because of its access to FNH's description of manufacture for the Minimi machine gun. FNH's description of manufacture was available to the government pursuant to agreements with FNH related to development of the technical data package for the SAW procurement.

Ross' principal contention was that the Army was required to neutralize FNMI's competitive advantage by providing FNH's description of manufacture to all the offerors under the RFP. We denied this part of Ross' protest on the

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ground that the manufacturing data for the Minimi had been developed independently by FNH, and any competitive advantage to FNMI therefore was due solely to its parent company's prior experience.

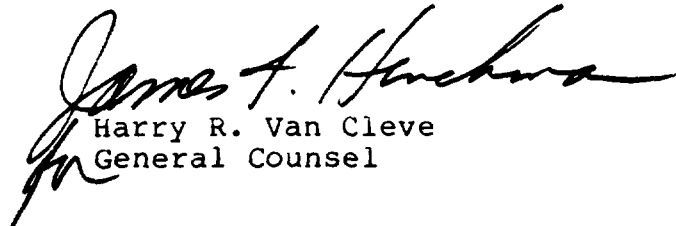
In its request for reconsideration, Ross renews its original contention that the Army was required to provide the description of manufacture to all the offerors, arguing that (1) by deciding to conduct a competitive procurement, the Army in effect represented that it would make the description of manufacture available; and (2) it was inconsistent with the Army's goal of establishing a domestic mobilization base to allow FNMI, an American subsidiary of a foreign company, to enjoy a competitive advantage. This latter argument was raised for the first time in the request for reconsideration, although Ross could and should have raised it in its initial protest. Since our Bid Protest Regulations do not contemplate unwarranted piecemeal development of protest issues, we need not consider this argument. Spectrum Leasing Corp.--Request for Reconsideration, B-218267.2, Mar. 25, 1985, 85-1 CPD ¶ 350.

In any event, in order to prevail on a request for reconsideration, the requester must convincingly show either errors of fact or of law in our earlier decision. Department of Labor--Reconsideration, B-214564.2, Jan. 3, 1985, 85-1 CPD ¶ 13. Here, Ross' arguments do not demonstrate a legal or factual error in our prior decision. As we stated, the government is not required to equalize the competitive advantage enjoyed by one offeror unless there is evidence of preferential treatment of that offeror or other unfair action by the government. See ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD ¶ 34; Avitech, Inc., B-214670, July 30, 1984, 84-2 CPD ¶ 125. In both its initial protest and its request for reconsideration, Ross ignores the crucial fact that any competitive advantage to FNMI accrued solely because of its parent company's prior experience with producing the Minimi weapon, in the course of which FNH developed the manufacturing data to which Ross now seeks access through the Army. In view of the fact that FNH independently developed the data on which Ross argues that FNMI's competitive advantage is based, there simply is no merit to Ross' contention that the Army's inaction--i.e., its decision not to include the data in the technical data package for the SAW--created the competitive advantage.

Further, as we said in our prior decision, the Army intended to encourage offerors to propose a manufacturing process suited to their own capabilities rather than merely adopting FNH's process for the Minimi. Thus, we see no basis for Ross' inference that FNMI's access to FNH's manufacturing data virtually ensured that award would be made to FNMI, since the RFP did not require that a particular manufacturing process be used.

With regard to another ground of the protest--Ross' contention that the technical data provided to the Army was improperly modified by FNH--Ross disagrees with our statement that it did not challenge the adequacy of the technical data included in the RFP. Ross' failure to challenge the adequacy of the data was discussed in our decision as one basis for our conclusion that Ross failed to show that the technical data had been modified. Ross now offers nothing more than its bare assertion that it would not have raised the data modification issue if it had not been concerned about the quality of the data. As we said in our prior decision, the record is clear that Ross did not argue that the technical data was defective.

The prior decision is affirmed.


Harry R. Van Cleve
General Counsel