The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Spacesaver--Second Reconsideration

File: B-224339.3

Date: October 16, 1986

DIGEST

Request for reconsideration denied where protester essentially only reiterates allegations previously considered, and otherwise does not establish that the decision was based on a mistake of law or fact.

DECISION

Spacesaver requests a second reconsideration of our decision Spacesaver, B-224339, Aug. 22, 1986, 86-2 C.P.D. ¶ 219, in which we denied its protest against the Department of the Army's award of a Federal Supply Schedule (FSS) contract to White Office Systems. We affirmed the denial in Spacesaver--Reconsideration, B-224339.2, Sept. 19, 1986, 86-2 C.P.D. ¶ ___.

We deny the request for reconsideration.

Spacesaver seems to believe we have failed to address the exact issue it attempted to raise. Spacesaver states in its request that ". . . our protest is based on a simple fact. An open market purchase was made for products that are covered under a mandatory FSS contract." Specifically, Spacesaver asserts that because the safety brake, safety floor and safety ramp for the mobile storage system required are listed as separate items on FSS contracts but are not included on White's, and because a purchase from the FSS is, by regulation, mandatory, it was improper for White to receive a contract for a system including these items.

In our September 19 reconsideration decision, we characterized Spacesaver's protest as being based on the fact that "even if White's system generally meets the Army's requirement," the three items in question "cannot be furnished by White since they are not listed on its FSS

contract." This is precisely the issue on which Spacesaver now states its protest is based. We went on to reject Spacesaver's argument, citing our decision in Stanley and Rack, B-204565, Mar. 9, 1982, 82-1 C.P.D. ¶ 217, for the proposition that the fact that the FSS firm offering the lowest price may have fewer of the different required items on its FSS contract than another FSS firm does not affect the lowest-priced firm's entitlement to the award. We held that award to the lower-priced firm was proper, recognizing that the controlling consideration in the situation was whether award was made to an FSS contractor.

Spacesaver cites the Federal Acquisition Regulation, 48 C.F.R. § 8.404 (1985), in support of its position that GSA had to buy Spacesaver's system despite its cost relative to White's. This regulation, however, merely sets forth the general rule that supplies and services on a mandatory FSS must be purchased from the schedule; the Army has satisfied this requirement by purchasing the mobile storage system on White's FSS contract. The regulation does not require the government to pay a higher price to a contractor merely because it has more of the required system features on its FSS contract.

Spacesaver thus essentially only reiterates allegations we previously addressed, and disagrees with our conclusion; this is not adequate to establish that our prior decisions were legally or factually in error. The request for reconsideration therefore is denied.

Harry R. Van Cleve
General Counsel