Van Schaik

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Honeycomb Company of America--Request for Reconsideration

File: B-225685.2

Date: September 29, 1987

DIGEST

Prior decision is affirmed on reconsideration where protester fails to show any error of law or fact warranting reversal of finding that contracting agency reasonably decided not to waive first article requirement for protester who had not produced the item being procured, a complex aircraft part, for an extended period of time.

DECISION

Honeycomb Company of America (HCA) requests reconsideration of our decision in Honeycomb Company of America, B-225685, June 8, 1987, 87-1 CPD ¶ 579, in which we denied HCA's protest against the award of a contract to Bonded Technology Inc. under request for proposals (RFP) No. F41608-87-R-2617, for 312 right wing tips and 306 left wing tips for the T-38 aircraft. We affirm our decision.

As we explained in our previous decision, the Air Force issued the solicitation for wing tips to only two firms, Bonded and Northrop Corporation, because the agency determined that this was an emergency requirement which should be limited to suppliers eligible for waiver of first article testing. HCA was not given an opportunity to compete because the firm had not produced the wing tips since 1982, and thus would not be eligible for waiver of first article testing. The agency determined that Bonded was eligible for waiver because its first article wing tips were tested and approved in 1986 under another Air Force contract. Although Northrop also was eligible for waiver of the first article requirement and was provided a copy of the RFP, it did not submit a proposal.

While we agreed with HCA's contention that the Air Force should have provided it a copy of the solicitation, we found that this was a procedural defect not affecting the validity of the procurement since HCA was properly viewed as not

eligible to compete. We also rejected contentions by HCA that first article testing should have been waived for HCA, that the agency failed to engage in advance procurement planning as required by 10 U.S.C. § 2304(f)(5)(A) (Supp. III 1985), and that the agency's failure to solicit HCA amounted to a de facto debarment.

In its reconsideration request, HCA principally challenges our conclusion that the Air Force was justified in excluding HCA based on its finding that the firm would not be eligible for waiver of first article testing. In this respect, we concluded that the agency's decision was justified by the fact that HCA has not produced wing tips since 1982 and the firm failed to produce an acceptable first article wing tip in seven attempts under a 1984 contract with the Air Force that was terminated for convenience in 1986.

HCA now argues that our decision was factually incorrect since HCA did not fail wing tip first article tests under its 1984 contract; according to the protester, its 1984 contract was terminated before first articles were delivered and the Air Force has never rejected an HCA first article wing tip. HCA also says that our decision, while concluding that the firm had not produced wing tips since 1982, failed to address the fact that the firm has continuously produced similar items. Finally, HCA argues that the Air Force's decision to waive the first article requirement for Bonded but not for HCA was unfair. Specifically, HCA argues that its first articles for similar items were subjected to more stringent testing than Bonded's first article wing tips and that Bonded's first article wing tips were approved even though they did not pass all required tests.

The Air Force confirms that no wing tips were tested under HCA's 1984 contract since the contract was terminated before the submission of first articles. The agency maintains, however, that its decision that HCA was not eligible for waiver of first article testing was justified by the fact that HCA has not produced wing tips since 1982.

As we explained in our original decision, an agency's determination with respect to waiver of a first article test requirement for a particular firm is subject to question only where it is shown to be unreasonable. Airline Instruments, Inc., B-223742, Nov. 17, 1986, 86-2 CPD ¶ 564. While it is now clear that no first article tests were conducted under HCA's terminated 1984 contract for wing tips, that does not demonstrate that the agency's decision not to waive the first article requirement under the current RFP was unreasonable. On the contrary, under Federal Acquisition Regulation, 48 C.F.R. § 9.303(b) (1986), first article testing may be imposed when a prior producer has

discontinued production for an extended period of time. Since HCA concedes that it has not produced these items since 1982, we see no basis to question the agency's decision, based on HCA's break in production of wing tips, that the firm was not eligible for waiver of first article testing.

Further, as HCA states, in reviewing an agency's decision regarding waiver of first article test requirements, we generally consider other factors bearing on the agency's decision. See Airline Instruments, Inc., B-223742, supra. Contrary to HCA's contention, however, the relevant additional factors in this case support the reasonableness of the agency's decision. Specifically, although HCA argues that waiver of the first article requirement was justified by the firm's continuous production of similar honeycomb core items, HCA concedes that a number of these similar items have been rejected by the Air Force in first article tests under previous contracts. While HCA disputes some of these first article failures, the firm's contentions in this regard provide no basis to conclude that the agency unreasonably determined that the requirement could not be waived. Amplitronics, Inc., B-209339, Mar. 1, 1983, 83-1 CPD ¶ 210. In addition, other factors, such as the complexity of the wing tips, delay and quality control problems under previous contracts, and the high risk to the aircraft and crews in the event of a wing tip failure, further support the reasonableness of the agency's decision. Id.

We also reject HCA's contention that it was unfairly treated in relation to Bonded since, according to HCA, its first articles for items similar to the wing tips were subjected to more stringent testing than Bonded's first article wing tips and since Bonded's first articles did not pass all required tests. The Air Force tested and conditionally approved Bonded's first article wing tips in 1986 while, by HCA's own admission, it has not had a wing tip tested since 1979 and has not produced these items since 1982. We do not believe that these circumstances show that HCA was treated unfairly by the Air Force's refusal to waive first article testing of the wing tips.

In the remainder of its reconsideration request, HCA reiterates arguments already raised in the protest and disagrees with our conclusions. We fully considered the protester's contentions in this regard in our initial decision, and we now have reviewed our decision in the context of the reconsideration request. Since we do not find that it was based on an error of fact or law, we see no

basis to disturb the decision. See Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1987); A&E Industries, Inc., et al.--Reconsideration, B-226997.8, et al., Aug. 17, 1987, 87-2 CPD ¶ ___.

Our decision is affirmed.

Harry R. Van Cleve
General Counsel