



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Microphor, Inc.--Request for Reconsideration
File: B-233148.2
Date: February 1, 1989

DIGEST

A request for reconsideration of a prior decision that does not indicate that the prior decision contained errors of fact or of law or information not previously considered that warrant its reversal or modification is denied.

DECISION

Microphor, Inc., requests reconsideration of our decision in Microphor, Inc., B-233148, Nov. 28, 1988, 88-2 CPD ¶ 521, in which we dismissed Microphor's protest of the cancellation of request for proposals (RFP) No. N00123-87-R-1122, issued by the Naval Regional Contracting Center, Long Beach, California. We dismissed Microphor's protest as untimely, and because our Office will not review an agency's determination to perform services in-house rather than by contracting out where the agency has not issued a solicitation for purposes of cost comparison under Office of Management and Budget (OMB) circular A-76.

Microphor requests reconsideration of our decision on the basis that its agency-level protest was timely and that the Navy is in violation of circular A-76 by not issuing a solicitation for the purposes of a cost comparison.

We deny the request for reconsideration.

Microphor argues that its agency-level protest was timely because the Federal Acquisition Regulation (FAR) provides no time limitation for the filing of a protest with an agency. It is our Bid Protest Regulations, however, and not the FAR, which govern the timeliness of protests filed with our Office. Our Regulations provide that we will consider a subsequent protest of a matter initially protested to an agency provided the agency protest was filed within the time limits provided for the filing of a protest initially with

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our Office. 4 C.F.R. § 21.2(a)(3) (1988). Thus, to be timely under our Regulations, Microphor's protest to the Navy would have to have been filed within 10 working days after the protester learned the basis of its protest, and it was not.

Microphor also argues that it did not learn of the RFP's cancellation on the date stated in our decision. The Navy stated, and we found, that Microphor learned the basis of its protest on August 29 but did not protest to the Navy until September 16, more than 13 working days later. In its request for reconsideration, Microphor argues that on August 29 it only learned that the solicitation might be canceled and this was not official notice. Microphor contends that it learned of the solicitation's cancellation in a telephone conversation with the contracting officer "later in the week" and received the cancellation amendment on September 8.

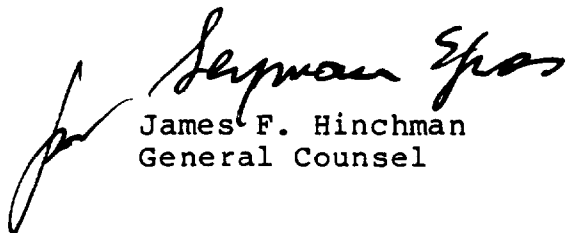
The established standard for reconsideration is that the requesting party must show that our prior decision contains either errors of fact or of law or information not previously considered that warrant its reversal or modification. See 4 C.F.R. § 21.2(a); I.T.S. Corp.--Request for Reconsideration, B-228919.2, Feb. 2, 1988, 88-1 CPD ¶ 101. Microphor does not meet this standard by merely disagreeing with the agency's statement of the date on which the Navy informed Microphor of the cancellation. Microphor, while admitting that it learned of the cancellation in a telephone conversation, does not state a specific date on which it learned this information, which constitutes the basis of its protest. Rather, Microphor directs us to September 8 as the date on which it received the amendment canceling the solicitation. However, we have held that oral notification is sufficient to place a protester on notice of its basis of protest and that a protester may not delay filing its protest until it receives written confirmation. Servidyne, Inc., B-231944, Aug. 8, 1988, 88-2 CPD ¶ 121.

In any event, as stated in our earlier decision, our Office will not review an agency's determination to perform services in-house rather than contract out where, as here, no competitive solicitation has been issued for cost comparison purposes under OMB Circular A-76. Etc. Technical & Professional Services, Inc., B-227554, July 2, 1987, 87-2 CPD ¶ 12.

Microphor, citing Part 7 of the FAR, argues that our Office should consider a protest that the agency in deciding to perform the services in-house, was required to conduct a cost comparison in accordance with circular A-76. Part 7.3

of the FAR provides the government's policy for conducting cost comparisons as set forth in OMB Circular A-76 and the Cost Comparison Handbook and the procedures for conducting a cost comparison once the decision to issue a solicitation for that purpose has been made. However, this does not provide any basis for our Office to question an agency determination not to issue a solicitation to conduct a cost comparison and our Office has consistently declined to review such a decision since it is a matter of executive policy. Etc. Technical & Professional Services, Inc., B-227554, supra.

The request for reconsideration is denied.



James F. Hinchman
General Counsel