

Arsonoff



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GMI Industries, Inc.--Request for
Reconsideration

File: B-231998.2

Date: March 23, 1989

DIGEST

Request for reconsideration is denied where supporting arguments are untimely presented, in error, or based upon information which was previously available to the protester but not presented during consideration of the initial protest.

DECISION

GMI Industries, Inc. (GMI), requests reconsideration of our decision, GM Industries, Inc., B-231998, Oct. 25, 1988, 88-2 CPD ¶ 388, denying its protest of the award of a contract to the Shipley Machinery Company under request for proposals (RFP) No. N00600-87-R-4651, which was issued by the Naval Regional Contracting Center for engine lathes, parts and accessories. In its original protest, GMI objected to the Navy's determination that its proposal was technically unacceptable because the firm had failed to substantiate that the lathes it offered were field proven models which had accumulated 40,000 operating hours use as required by the RFP; GMI also argued that Shipley had failed to meet the same requirement.

We deny the request for reconsideration.

Under the RFP, offerors were required to substantiate the field proven reliability of the lathes they offered by submitting manufacturer's technical literature and a customer list containing information relating to representative field proven models they had sold in the past. Information such as the number of operating hours and a point of contact familiar with the equipment was required for verification purposes.

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GMI first submitted a list of lathes it had produced since 1983; following discussions during which the protester and the agency agreed that it was unlikely that machines of such recent vintage met the 40,000-hour requirement, GMI submitted a best and final offer (BAFO) containing a list of 44 machines sold between 1960 and 1969. In evaluating this list, the Navy determined GMI's BAFO to be technically unacceptable because, in the agency's opinion, GMI had not manufactured the lathes upon which its final proposal was based. While GMI had, in 1974 or 1975, acquired the product line of the firm which sold those lathes, the agency concluded that there had been such a significant break in manufacture in terms of time, facilities, work force and fabricating techniques, that the protester could not be viewed as the manufacturer of the lathes referenced in its BAFO. Underlining this conclusion were the terms of GMI's own BAFO which indicated that it was "impossible for us to know the hours of utilization or maintenance" of the lathes in question. Further, the BAFO did not include a customer point of contact to verify the reliability of the lathes because the protester reported that once they were sold, GMI had no further contact with the end users unless problems developed.

Award was then made to Shipley, whose proposal took no exception to the 40,000-hour requirement. While not specifically indicating the number of operating hours for the 40 lathes it reported selling between 1956 and 1976, the awardee's proposal did provide a customer point of contact for each. Shipley had been acquired by a third party in 1987, however, after an investigation, the Navy determined that there had not been a break in manufacture which in any way precluded the awardee from being regarded as the manufacturer of the field proven lathes referenced in Shipley's proposal.

In its request for reconsideration, GMI argues: (1) that Shipley has not produced the required lathes for a considerable period of time--at least 10 years; (2) that the protester's own recent performance history in supplying lathes to the government was improperly disregarded by the Navy; (3) that the terms of the RFP precluded the Navy from using the "break in manufacture" test as it did on GMI's proposal; and (4) that Shipley's proposal, like its own, was not fully responsive to the requirement for a customer list.

First, relying on general references to conversations it has had with Shipley, industry representatives and government lathe customers to the effect that the awardee has not manufactured a lathe meeting the RFP specifications for at least 10 years, GMI takes issue with our conclusion that it

failed to prove a virtually identical allegation in its original protest. Further in this regard, 3 months after the initial request for reconsideration was filed, GMI filed another submission citing a Navy memorandum dated October 26, 1988, 1 day after our decision was issued, which states that a certain variable speed Shipley model lathe is still in production. This, according to the protester, shows that a manual model meeting the RFP specification is not being produced.

As far as the references to the conversations in its initial request are concerned, we do not reconsider decisions on the basis of previously available information, such as that allegedly contained in the cited conversations. A protester who fails to submit all relevant information in its initial protest does so at its own peril; moreover, we note that it is not the function of this Office to investigate allegations raised in the protest record. O'Gara-Hess & Eisenhardt Armoring Co.--Reconsideration, B-232508.2, Sept. 29, 1988, 88-2 CPD ¶ 302. As far as the later submitted information is concerned, while the protester explains that it could not be timely submitted because of the agency's refusal to release it, we simply do not find that it is at all convincing. In any event, the report cited by GMI begins by stating that Shipley is still "producing manual lathes"--lathes which we understand are the type called for by the RFP specifications. Thus, GMI's position in this regard lacks merit.

Second, GMI takes issue with the agency's position that its own recent performance history under other solicitations was irrelevant to the Navy's technical determinations under this RFP which contained more stringent reliability requirements--i.e., the 40,000-hour requirement--and argues that machine reliability has nothing to do with the stringency of specifications. This line of argument is essentially a reiteration of GMI's earlier position and our response was and still is that the fact that the protester's products may have been accepted under other solicitations--none of which is alleged to contain the 40,000 hour requirement--does not excuse a failure to satisfy the requirements under the protested RFP, since each procurement stands alone.

Third, GMI objects to the Navy's conclusion that there had been a significant break in manufacture surrounding its purchase in the 1970's of the product line of the firm which built and sold the lathes upon which its BAFO was predicted. In this regard, GMI argues that the terms of the RFP did not require continuity of production. It argues that the Navy in drafting this solicitation substituted the

requirement that the lathes be "field proven" for the usual requirement that they be "current models," and that this precluded the agency from examining whether or not offerors were, in fact, the actual manufacturers of the "field proven" lathes proposed. We simply fail to see the logic of the protester's argument and we think it was indeed reasonable for the agency to require that equipment offered be manufactured by substantially the same entity as produced the equipment which had accumulated the 40,000 hours of operating time. In any event, we think this argument could and should have been raised in the initial protest. Further, to the extent that GMI is now protesting the "new" reliability requirements contained in the RFP, its objections are untimely.

Finally, GMI argues in effect that Shipley was in no better position than the protester was to comply with the requirements of a customer list containing hours of operation and points of contact actually familiar with 20-year old machinery. In support of this position, GMI offers invoicing information relating to machines sold by its predecessor firm purporting to demonstrate that hour meters were not specified on lathes of that vintage; without such meters, Omni now argues, "actual operating time is impossible to determine." This is essentially an assertion that the RFP specifications were impossible to meet and, therefore, were defective; as such, it should have been raised prior to the closing date for receipt of proposals and GMI may not now rely on this line of reasoning. Additionally, as previously discussed, we do not reconsider decisions based on information which the protester could have but did not provide during our consideration of the initial protest. O'Gara-Hess & Eisenhardt Armoring Co.--Reconsideration, B-232508.2, supra.

The request for reconsideration is denied.

for *Seymour Epos*
James F. Hinchman
General Counsel