Morrow

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Air Inc.--Request for Reconsideration

File: B-236334.2

Date: March 30, 1990

D.A. Dean, for the protester.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Fact that bidder fails to submit a bid on a line item under an invitation for bids, based on oral advice that no award would be made on that item, does not constitute a basis on which General Accounting Office will sustain a protest, when protester waits more than 4 months after bid opening before inquiring about the award and the protester does not dispute its offered product would not comply with agency's proposed revised specification.

DECISION

Air Inc. requests reconsideration of Air Inc., B-236334, Nov. 13, 1989, 89-2 CPD ¶ 455, in which we dismissed its protest against the award of a contract for pneumatic ratchet sets to Snap-on Tools Corporation under invitation for bids (IFB) No. FCEP-BP-F8111-2S-2-7-89, issued by the General Services Administration (GSA), for various tools.

We deny the request for reconsideration.

The IFB had 20 separate line items; line item No. 9 was for the pneumatic ratchet sets in question. As described in our prior decision, Air Inc. raised various questions about certain allegedly restrictive technical design criteria in this item's purchase description. This led to an exchange of letters and phone calls with GSA, and some changes to the purchase description in amendment No. 1. GSA also declined to change other contested requirements. Although Air Inc. submitted a bid under the IFB, it did not submit a bid on item No. 9 by the March 1, 1989, bid opening date. GSA made

award to Snap-On Tools for item No. 9 on April 24. During a telephone conversation in mid-July, concerning the status of the IFB, GSA advised Air Inc. of this award, whereupon Air Inc. filed its protest.

In its protest, Air Inc. argued that GSA improperly influenced it not to submit a bid for the ratchet sets by the telephonic and written advice of its contract specialist that award would not be made under the IFB for item No. 9, and that future requirements for the item would be solicited using a modified purchase description.

We found that Air Inc. had inappropriately relied upon the alleged oral conversation, altering the terms and conditions of the IFB, as a basis for not submitting a bid on line item No. 9 because the IFB expressly advised that only written interpretations would be binding on the government. Although a letter dated February 28, 1989, also advised Air Inc. that no award would be made on line item No. 9 and a modified purchase description would be used, Air Inc. did not receive this advice prior to bid opening.1/ Therefore, Air Inc. assumed the risk that line item No. 9 would not be awarded as provided in the IFB.

We also found that the protest was untimely if Air Inc. intended to protest the allegedly restrictive specification, since it was required to do so prior to bid opening, see 4 C.F.R. § 21.2(a)(1) (1989), and this protest was filed more than 4 months after bid opening. Finally, we noted that it did not appear that Air Inc. could have competed, even if GSA had modified and separately procured this item, as described in its February 28 letter, because this revised purchase description did not address all of Air Inc.'s concerns.

In its request for reconsideration, Air Inc. argues that its protest actually concerns GSA's disregard of its written notice that no award of this item would be made. Air Inc. maintains this notice is binding on the government, whenever it was received.

However, it is apparent that when Air Inc. submitted its bid, it had not been advised in writing that item No. 9 might not be awarded under the IFB. Moreover, Air Inc. still does not dispute that its offered product would not

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1/ In this regard, GSA states it mailed this letter, signed by the contract specialist, on the day of bid opening, after Air Inc. submitted its bid. Air Inc. does not allege it received this letter prior to bid opening.

comply with the proposed revised purchase description. Finally, since Air Inc. does not explain why it waited more than 4 months after bid opening before inquiring as to the status of the item No. 9 award, we remain of the view, expressed in our initial decision, that it did not diligently pursue the information giving rise to its protest. See John v. Gracey, B-232156.2, Jan. 23, 1989, 89-1 CPD ¶ 50. Under the circumstances, we find no basis to sustain Air Inc.'s protest, even assuming the contract specialist's advice that no award would be made on item No. 9 had some legal effect.

Air Inc. also claims that although its protest did not contest the alleged undue restrictiveness of the specifications, it is doing so now. Recognizing the untimely nature of this protest, Air Inc. requests we consider this protest basis under the good cause or significant issue exceptions to our timeliness requirements. The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from submitting a timely protest. Thermo Seal Bldg., Inc.--Request for Reconsideration, B-235704.2, June 29, 1989, 89-2 CPD ¶ 13. Since Air Inc. has not offered any explanation as to why it waited more than 4 months after bid opening before filing its protest, there is no basis to apply the good cause exception. Nor does this protest fall under the significant issue exception, since it is not of widespread interest to the procurement community, but rather concerns the specifications on a particular procurement. Custom Programmers Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245.

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 any information not previously considered that warrant its reversal or modification. 4 C.F.R. § 21.12(a). Mere disagreement or the repetition of previous arguments does not satisfy this standard. See Triple Tool and Mfg. Co., B-223269.3, Dec. 13, 1989, 89-2 CPD ¶ 547. Since Air Inc. has not shown that our decision contained either errors of fact or of law or any information not previously considered, we will not reconsider our decision.

The request for reconsideration is denied.

James F. Hinchman
General Counsel