Van Schaik
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stocker & Yale, Inc.--Reconsideration

File: B-238251.3

Date: May 6, 1991

Jay P. Urwitz, Esq., Hale & Dorr, for the protester.
D. Joe Smith, Esq., Jenner & Block, for Marathon Watch Company, an interested party.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A party requesting reconsideration must show that prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of the decision. Repetition of arguments made during the original protest does not meet this standard.

DECISION

Stocker & Yale, Inc. requests reconsideration of our decision Stocker & Yale, Inc., B-238251.2, Dec. 6, 1990, 90-2 CPD ¶ 461, in which we denied Stocker's protest of a contract awarded to Marathon Watch Co., Ltd. by the General Services Administration (GSA) under request for proposals (RFP) No. FCGA-N3-N-126-9-13-89 for wrist watches.

We deny the request for reconsideration.

Our decision addressed Stocker's second protest of the award to Marathon; in an earlier protest, Stocker argued that Marathon should not have received the award because it did not have the Nuclear Regulatory Commission (NRC) licenses required by the solicitation. We sustained Stocker's protest and recommended that GSA determine whether Marathon, on its own, or through its suppliers, "possesses" licenses that meet the RFP requirements. Stocker & Yale, Inc., B-238251, May 16, 1990, 90-1 CPD ¶ 475. Following GSA's determination that Marathon met the license requirements, Stocker filed its second protest, arguing that Marathon did not have the required licenses either currently or at the time of award.

In response to Stocker's second protest, we concluded that as of the time the decision was issued, Marathon had the required licenses. Further, we stated that while we could not conclude that Marathon was in compliance with the license requirements at the time of award--as required by the solicitation--GSA nonetheless had complied with the recommendation in our initial decision and reported that the contract was now substantially performed. We noted that it appeared that GSA was misled by the recommendation in our decision, which used the present tense to instruct GSA to determine whether Marathon "possesses" the required licenses rather than the past tense. Under these circumstances, and since the awardee was performing in accordance with the license requirements, we denied the protest.

In its reconsideration request, Stocker principally argues that by focusing on the word "possesses" in the first decision, our decision on Stocker's second protest ignored our first recommendation that the awardee was to possess "licenses that meet the RFP requirements," which included the mandate that the licenses be possessed at the time of award. Stocker notes that our second decision stated that GSA had not shown that Marathon possessed the licenses at the time of award. According to Stocker, Marathon did not obtain such licenses, if at all, until 8 months after award and GSA failed to follow our initial recommendation since it did not determine that Marathon had the licenses at the time of award.

We see no reason to change our conclusion. We still believe that GSA was confused by the language in our initial decision. We also note that at the time of the award to Marathon, Stocker was not itself eligible for award as it was not listed on the qualified products lists as the RFP required and it is not at all clear that the protester possessed the necessary licenses itself at that time.

Stocker also argues that, contrary to our decision, there was no evidence that the contract had been substantially performed. Although our second decision stated that GSA had placed orders for more than 17,000 watches under Marathon's contract, Stocker says that GSA's report indicated that far fewer than that had been ordered. Stocker also argues that, in any event, there was no indication of the number of watches actually delivered under the contract, of the costs Marathon had incurred performing the contract or any assessment of the difficulty of obtaining replacement watches. Under these circumstances, Stocker argues that there was no evidence of any potential for forfeiture or economic waste to justify allowing the award to stand.

In responding to Stocker's second protest, in October 1990, GSA reported that it had received substantial backorders for

the watches, which were being used in Operation Desert Shield, and its monthly demand forecast for the watches rose from 912 in June to 1,610 in October. GSA also explained that "[s]ignificant lead time is necessary to produce these watches, and termination of the present contract would prevent GSA from meeting the needs of Operation Desert Shield and other customers." On December 4, in response to our request, GSA informed our Office that it had placed orders for more than 17,000 watches under Marathon's contract. We therefore see no basis to disturb our conclusion regarding the extent of performance.

Finally, Stocker argues that pursuant to 4 C.F.R. § 21.6(d) (1991), we should have awarded it the cost of filing and pursuing the protest, including attorneys' fees, since in our second decision, as in the first decision, we concluded that GSA had failed to determine that Marathon met the RFP license requirements. Also, according to Stocker, it should be awarded attorneys' fees because it was unreasonably excluded from the competition and other remedies are inadequate.

Since we denied Stocker's second protest, we did not award it the costs of filing and pursuing its protest. There is no basis to reverse that decision. See EG&G Washington Analytical Servs. Center, Inc., 233141, Feb. 21, 1989, 89-1 CPD ¶ 176.

The request for reconsideration is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel