



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Clear Air, Inc.--Second Reconsideration  
**File:** B-242582.4  
**Date:** May 20, 1991

Ralph W. Taylor for the protester.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## DIGEST

1. Second request for reconsideration of prior General Accounting Office decision, affirming dismissal of protest as untimely, is denied where the protester's argument--that it orally protested the issue to the agency within the time required by our timeliness rules--could have and should have been raised in its earlier reconsideration request but was not. In any event, the Federal Acquisition Regulations do not permit oral protests.
2. Second reconsideration request that protester was an interested party to protest the agency's selection of another firm for award is denied where the protester would not be in line for award even if its protest of the award selection were sustained; the incurring of proposal preparation costs does not in itself provide the requisite economic interest to maintain a protest.

## DECISION

Clear Air, Inc. requests reconsideration of our decision in Clear Air, Inc.--Recon., B-242582.2; B-242582.3, Apr. 24, 1991, 91-1 CPD ¶ \_\_\_\_\_. In that decision, we affirmed the dismissal as untimely of Clear Air's protest against its exclusion from the competitive range under request for proposals No. DACA67-90-R-0061, issued by the Corps of Engineers, Department of the Army. We also dismissed in that decision Clear Air's protest of the Corps' selection of Blount, Inc. for award because Clear Air was not an interested party to protest the award.

We deny the second request for reconsideration.

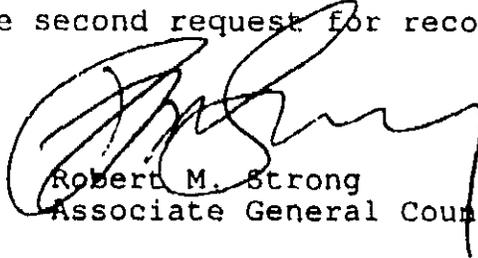
To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or law or information not previously considered that warrants its reversal or modification. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.12(a)); Gracon Corp.--Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. We will not reconsider a prior decision based upon arguments and information that could have and should have been presented during our initial consideration of the protest. Newport News Shipbuilding and Dry Dock Co.--Recon., B-221888.2, Oct. 15, 1986, 86-2 CPD ¶ 428.

Clear Air first argues, citing Joule Eng'g Corp.--Recon., 64 Comp. Gen. 540 (1985), 85-1 CPD ¶ 589, that it orally protested to the agency the exclusion of its proposal from the competitive range on the day it learned of the exclusion and thus its protest to our Office was timely. This new argument could have and should have been made during our consideration of the prior reconsideration request, and accordingly we will not reconsider our prior decision based upon it. Newport News Shipbuilding and Dry Dock Co.--Recon., B-221888.2, supra. In any event, oral protests are not provided for under the Federal Acquisition Regulation (FAR), which provides for written protest objections. See FAR § 33.101; K-11 Constr., Inc., 65 Comp. Gen. 422 (1986), 86-1 CPD ¶ 270. Our decision in Joule Eng'g Corp. was based upon the then existing procurement regulations, which, unlike the FAR, allowed oral protests to procuring agencies.

We will also not reconsider our decision that Clear Air is not an interested party to protest the selection of Blount for award based upon the protester's argument that it is an interested party because it spent considerable time and money pursuing the contract work. The Competition in Contracting Act of 1984 (CICA) authorizes our Office to decide a protest by an "interested party," which CICA defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by failure to award the contract." 31 U.S.C. § 3551(2) (1988). As explained in our prior decision, a party that would not be in line for award if its protest were sustained does not have the requisite economic interest to maintain a protest. See also Flexible Serv. Co., B-239037, June 11, 1990, 90-1 CPD ¶ 547. Here, since Clear Air's proposal was excluded from the competitive range, and the protest challenging that exclusion is untimely, Clear Air would not be in line for award even if its protest challenging the selection of Blount were

sustained.<sup>1/</sup> The incurring of proposal preparation costs does not in itself provide the requisite economic interest to maintain a protest. See ISC Defense Sys., Inc.--Recon., B-236597.3, Apr. 5, 1990, 90-1 CPD ¶ 360. Under the circumstances, Clear Air does not qualify as an interested party to protest the Elcunt award.

The second request for reconsideration is denied.



Robert M. Strong  
Associate General Counsel

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<sup>1/</sup> In this regard, there is another firm, other than Blount, remaining in the competitive range, and Clear Air does not challenge that firm's inclusion in the competitive range.