Ahearn

Comptroller General
of the United States

Washington, D.C. 20548

144734

Decision

Matter of: Kollmorgen Corporation--Reconsideration

File: B-242602.2

Date: August 21, 1991

Paul Shnitzer, Esq., and Robert P. Davis, Esq., Crowell & Moring, for the protester.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester essentially reiterates original basis of protest and disagrees with decision and does not show that prior denial was based on errors of fact or law or present information not previously considered that warrants reversal or modification of decision that agency reasonably determined that awardees satisfied solicitation requirement for proven ability to produce the items being procured.

DECISION

Kollmorgen Corporation requests reconsideration of our decision, Kollmorgen Corp., B-242602, June 5, 1991, 70 Comp. Gen. ___, 91-1 CPD ¶ 529, in which we denied its protest against the Department of the Army's award of contracts to Lenzar Optics Corporation and Opto Mechanik, Inc. under request for proposals (RFP) No. DAAA09-91-R-0063, each award for a different type of sight assembly for the M1A1 Abrams Tank.

We deny the request.

The RFP was issued to Kollmorgen, Lenzar, and Opto only, sources which had previously been awarded contracts for the items. The Army justified less than full and open competition on the basis of urgency, determining that only the identified sources possessed the necessary production capabilities, technical expertise, and overall knowledge required to produce the items within the required time frame, which did not allow for first article testing (FAT). In this regard, the RFP, as amended, provided that "only producers with a proven ability

to produce the item(s) under a previous procurement" would be considered.

In its protest, Kollmorgen argued primarily that the awardees should not have been considered for award because they did not meet the proven ability requirement. We denied the protest, finding that the agency reasonably determined that the awardees satisfied the requirement because they had received prior production contracts for the items being procured and had made satisfactory progress under those contracts to indicate a proven ability to produce the required items.

In its request for reconsideration, Kollmorgen continues to maintain that the awardees failed to meet the RFP's proven ability requirement. Kollmorgen maintains that our decision erroneously held that the requirement was satisfied solely by an offeror's receipt of a prior award for the same item, notwithstanding that the offeror had neither produced the item under the prior contract nor passed FAT.

Kollmorgen mischaracterizes our decision. As indicated above, we did not hold that the proven ability requirement was satisfied solely by an offeror's receipt of a prior contract. Rather, we found that the agency reasonably determined that the awardees met the proven ability requirement because of objective indications as to the firms' proven ability to produce. Specifically, the agency had taken into account: (1) favorable information it obtained during the preaward surveys conducted prior to award of the firms' prior contracts; and (2) the fact that at the time of award in January 1991, Lenzar had begun prototype production and was expected to perform FAT during June 1991, and that Opto had completed in-house testing and was scheduled for FAT in April 1991. Based on these indications, the agency reconfirmed that FAT would not need to be included in the proposed contracts with Opto and Lenzar. We concluded that the firms' progress in production on their prior contracts constituted a reasonable basis for the agency to determine that the awardees met the proven ability requirement. In reaching our conclusion, we rejected the protester's contrary view that this progress was insufficient; Kollmorgen's reiteration of its view here is not a basis for reconsidering our decision. Sal Esparza, Inc.--Recon., B-231097.2, Dec. 27, 1988, 88-2 CPD ¶ 624.

Kollmorgen also argues that we failed to consider its previously raised argument that the agency's lack of notification to the firm as to the competitive nature of the procurement was prejudicial. According to the protester, it considered this a de facto sole-source procurement, believing it was the only firm that could meet the solicitation's proven ability requirement. The protester contends that had it been aware of competition, it would have lowered its price.

There was no need to explicitly address this argument. The import of our decision was that Kollmorgen's interpretation of the proven ability requirement was overly restrictive. Since Kollmorgen's belief that it was in a de facto sole-source position was based on this unwarranted restrictive interpretation, it followed--and we believe this point was clear from our decision, even though not explicitly made--that there was no basis for Kollmorgen's pricing its offer as if it were a sole-source contractor.

To obtain reconsideration, a protester must either show that our prior decision may have contained factual or legal errors, or present information not previously considered warranting reversal or modification. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.12(a)). Repetition of arguments made during the original protest or mere disagreement with our decision, such as here, does not meet this standard. Sal Esparza, Inc.--Recon., B-231097.2, supra. Therefore, the request for reconsideration is denied.

James F. Hinchman
General Counsel