



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** J. M. Yurick Associates, Inc.--Reconsideration

**File:** B-243806.3

**Date:** February 12, 1992

Gilbert J. Ginsburg, Esq., and Catherine A. English, Esq., Epstein Becker & Green, P.C., for the protester, Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Prior dismissal is affirmed on reconsideration where the protester has not shown that our prior decision contains either errors of fact or law, and the protester merely disagrees with our prior decision.

2. Protest of an alleged solicitation impropriety subsequently incorporated into the solicitation and apparent from the face of the solicitation was untimely where the protester failed to file its protest prior to the closing date for receipt of revised proposals following the incorporation.

### DECISION

J. M. Yurick Associates, Inc. requests reconsideration of our decision, J. M. Yurick Assocs., Inc., B-243806.2, Sept. 16, 1991, 91-2 CPD ¶ 245. In that decision, we dismissed Yurick's protest because Yurick, the lowest technically rated, highest proposed cost offeror, lacked the requisite direct and substantial economic interest to challenge the agency's cost realism analysis of the awardee, Harry Kahn Associates, Inc., the highest technically rated, lowest evaluated cost offeror under request for proposals (RFP) No. N62269-90-R-0283, issued by the Department of the Navy. We determined that Yurick would not be next in line for award even if its protest were sustained since in its comments to the agency report, it abandoned the issue concerning the agency's cost realism analysis of the second low offeror, Dayton T. Brown, a higher technically rated, lower proposed cost offeror. We also found academic

Yurick's argument that offerors did not compete on an equal basis because the agency requested and subsequently incorporated into the solicitation a wage determination applicable to the location of the user activity, but not to the offerors' respective places of performance. The record showed that in submitting revised cost proposals, both Yurick and Kahn disregarded the improper wage determination and obtained wage determinations applicable to their respective places of performance and Brown's cost proposal was consistent with the applicable wage determination for its place of performance.

In its request for reconsideration, Yurick disagrees with our initial decision and reiterates its argument that offerors did not compete on an equal basis because the agency did not include in the solicitation the particular wage determinations applicable to each offeror's place of performance.

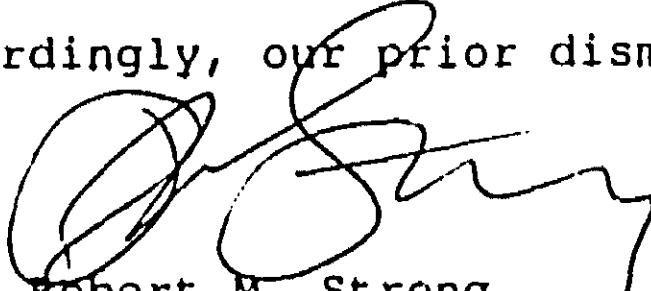
Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1991), to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. Here, Yurick's repetition of arguments made during our consideration of its original protest and its mere disagreement with our decision do not meet this standard. Interior Elements, Inc.--Recon., B-238117.2, Aug. 7, 1990, 90-2 CPD ¶ 139; R.E. Sherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Further, with respect to this argument, our Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Alleged improprieties which do not exist in the solicitation as issued initially, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1); Helitune, Inc., B-235527, June 23, 1989, 89-1 CPD ¶ 598; Interstate Diesel Servs., Inc., B-232668.2, Oct. 28, 1988, 88-2 CPD ¶ 408. Here, the solicitation as initially issued on September 6, 1990, did not include a wage determination. Yurick, Kahn, and Brown submitted technically acceptable initial proposals by the November 2 closing date. By letter dated March 13, 1991, the agency incorporated into the solicitation a wage determination which was not applicable to any offeror's, including Yurick's, place of performance. Because this defect in the terms of the solicitation was apparent from the face of the

solicitation, Yurick should have protested this matter prior to the closing date for receipt of revised proposals on March 27. Yurick's post-award protest of this solicitation impropriety thus was untimely.

Yurick also alleges that the award to Kahn was improper because certain personnel proposed by Kahn did not meet the solicitation's experience requirements. We did not view this as an independent contention in our initial decision, but one related to Yurick's cost realism allegation. In any event, since Yurick is not next in line for award even if it were correct in its allegation, Yurick is not an interested party to challenge the award to Kahn. See ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Accordingly, our prior dismissal is affirmed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong  
Associate General Counsel