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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: G.H. Harlow Co., Inc.--Reconsideration

File: B-245050.2; B-245051.4

Date: April 10, 1992

Tracy J. White, Esq., Stoel, Rives, Boley, Jones & Grey, for the protester.
Corinne S. Yee, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest grounds, first raised by protester more than 10 days after it knew or should have known of the grounds, were properly considered untimely by General Accounting Office, and do not form the basis for reconsideration.

2. Request for reconsideration is denied where protester fails to show any error of law or fact warranting reversal of finding that agency had compelling reason to cancel solicitation and reissue it using proprietary specifications based upon agency's minimum need for compatibility of fire alarm receiver and existing transmitters.

DECISION

G.H. Harlow Co., Inc. requests reconsideration of our decision denying its protests of the Department of the Navy's cancellation of invitation for bids (IFB) No. N62471-90-B-2046 and issuance of IFB No. N62471-91-B-2475. G.H. Harlow Co., Inc., B-245050 et al., Nov. 20, 1991, 91-2 CPD ¶ 484.

We deny the reconsideration request.

The IFBs at issue sought a new receiver console for use at the fire alarm dispatch headquarters at Pearl Harbor Naval Shipyard, Oahu, Hawaii. The console is for monitoring radio transmitter fire alarms for Department of Defense buildings and installations (with the exception of Hickam Air Force Base). Harlow, the low bidder under the first IFB,

contended that the Navy should have awarded it a contract instead of canceling the IFB and reissuing it, specifying a King-Fisher Company product.

In denying the protests (B-245050 and B-245051), we noted that the receivers had to be compatible with the existing transmitters because the console of one manufacturer cannot receive signals from transmitters of another manufacturer; we also noted that National Fire Protection Association requirements provide that a receiver may accept a maximum of 500 transmitters on the same frequency. At the time of issuance of the first IFB, the Navy was using a King-Fisher receiver to monitor 484 King-Fisher transmitters. After bid opening, the Navy discovered that it and the Army, under separate contracts, had acquired more King-Fisher transmitters than could be accommodated by the existing receiver console.[1]

We found that the Navy had reasonably determined that creation of a "mixed system" of the excess King-Fisher transmitters and a non-King-Fisher receiver was not feasible because such a system would void the Factory Mutual (FM) or Underwriters Laboratory (UL) listing required by the specifications. Further, if obtaining an FM or UL listing for a mixed system was possible, the process was expected to take in excess of 11 months and the Navy needed to provide fire protection to the buildings affected as soon as possible. We also observed that the cost of replacing the excess transmitters exceeded the cost of Harlow's proposed console. We found that these circumstances established that the original IFB did not set forth the agency's minimum needs, and that the Navy had a compelling reason to cancel the first IFB. We determined that these same circumstances established that the proprietary specification was a legitimate requirement, reasonably related to the agency's minimum needs for compatibility. See Glock, Inc., B-236614, Dec. 26, 1989, 89-2 CPD ¶ 593. We dismissed as untimely a third protest (B-245051.3), which alleged that the King-Fisher receiver did not meet a requirement that it be Federal Communications Commission (FCC) type accepted.

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[1]In its original report to our Office, the Navy advised that some 15 transmitters over the existing capacity had been acquired. In its report in conjunction with the reconsideration request, the Navy informs us that the actual number is 11 and attributes the discrepancy to replacement of old transmitters. This difference in the number of transmitters does not affect our conclusion that the cancellation and reissuance of the solicitation were proper.

In its request for reconsideration, Harlow complains that our decision did not address its arguments that the Navy violated Federal Acquisition Regulation §§ 6.302-1(c) and 10.004(b)(2) by failing to prepare a justification and approval (J&A) for use of the proprietary specification and violated the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(f)(5)(a) (1988), by failing to engage in advance planning.

We did not address the protester's arguments in these respects because these issues were untimely raised. Our Bid Protest Regulations require that a protest be filed within 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Where a protester initially files a timely protest, and later supplements it with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. See Little Susitna Co., 65 Comp. Gen. 651 (1986), 86-1 CPD ¶ 560. Our regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Id.

In this protest, the Navy's ostensible failure to issue a J&A or to engage in advance procurement planning was apparent from the agency report which Harlow received on September 11. In its September 23 comments on the agency report, Harlow did not mention either of these grounds for protest. Although Harlow mentioned the Navy's long awareness of a need to procure a new receiver in letters dated October 11 and 25, the protester did not raise the lack of advance planning and J&A issues until its letter of November 18, more than 10 working days after it knew or should have known of these grounds for protest. Therefore, these protest grounds are untimely and not for consideration by our Office.

Harlow also argues that its protest of these issues should be considered under the significant issue exception to our timeliness regulations. 4 C.F.R. § 21.2(c). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions

are strictly construed and rarely used. Id. The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community which have not been considered on the merits by this Office in a previous decision. Herman Miller, Inc., B-237550, Nov. 7, 1989, 89-2 CPD ¶ 445. Harlow's protest of the absence of a J&A and the lack of advance planning do not meet this standard.

Harlow also requests reconsideration of our finding that its third protest (B-245051.3) was untimely. In that protest, Harlow alleged that King-Fisher's receiver did not meet the solicitation's FCC type acceptance requirement. We found that the protest appeared untimely since Harlow first alluded to the underlying factual material in its September 23 comments, but did not raise it as a protest ground until October 10, more than 10 working days later. 4 C.F.R. 21.2(a)(2). Harlow now contends that these references were merely intended to bolster its original grounds of protest.

According to Harlow, it was not until November 5, when the Navy explained its rationale for finding King-Fisher's receiver acceptable, that its "suspicions" about King-Fisher's equipment were confirmed. In this regard, Harlow now contends, for the first time, that until the Navy's report made clear King-Fisher's lack of FCC type acceptance, Harlow believed it possible that King Fisher's console "could" have used another manufacturer's components which "might" have a different FCC type acceptance than a receiver manufactured by King-Fisher. Thus, it contends that its comments, filed within 10 working days, made the protest timely. However, this contention is directly contradicted by Harlow's expressed awareness of the issue as early as September 23, and its October 10 statement that "challenge[d] the compliance of King-Fisher's equipment" as "an additional basis for protest." Further, the information on which Harlow now relies did not raise a new protest ground. Since the basic protest issue remained unchanged, Harlow could not make its untimely, October 10 protest timely simply by responding to the agency's defense.

Finally, Harlow argues that our decision was based upon an inaccurate understanding of the technical facts involved and disagrees with our finding that the Navy's cancellation and

resolicitation were valid based upon considerations of compatibility requirements, cost impact, and need to obtain fire protection as soon as possible.[2]

In expressing disagreement with our decision, the protester in essence repeats arguments it made previously. Under our Bid Protest Regulations, 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. 4 C.F.R. § 21.12(a). The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.

for James F. Hinchman
General Counsel

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[2]Our original decision did not specifically address Harlow's offer to install its console in 2 weeks instead of the 240 days allowed under the IFB. As with Harlow's offer to replace the excess King-Fisher transmitters, which we did discuss, this offer has no effect on the reasonableness of the Navy's decision. G.H. Harlow Co., Inc., supra. The offer is not binding on Harlow and was not before the Navy when it made its decision.