



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Diesel Engineering Co. Inc.--
Reconsideration

File: B-245534.2

Date: June 16, 1992

John R. Bagileo, Esq., and Claire L. Shapiro, Esq., Klein & Bagileo, for the protester.
Richard P. Burkard, Esq. and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration which does not show that initial decision contained errors of fact or law or that information not previously available exists that would warrant its reversal or modification is denied.

DECISION

American Diesel Engineering Co., Inc. requests that we reconsider our decision, American Diesel Eng'g Co., Inc., B-245534, Jan. 16, 1992, 92-1 CPD ¶ 79, in which we denied its protest against request for proposals (RFP) No. DTCG80-91-R-3FAB83, issued by the Coast Guard for the disassembly, inspection, reassembly, and testing of Paxman Valenta 16RP200M Marine Propulsion engines.

We deny the reconsideration request.

Initially, the protester alleged that the RFP failed to allow for full and open competition by not providing essential Paxman data to potential offerors. The Coast Guard responded that it could not make the data available since it had only limited rights in it. The agency explained that the Paxman data first came into its possession pursuant to contract No. DTCG23-84-C-31063, but that under a modification to the contract, the government received only limited rights to that data.

In its comments on the agency's report (which contained the contract and the relevant modification), American acknowledged that the modification to the contract "purports to give the government limited rights 'in all technical data' supplied" under the contract. American did not directly

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rebut this interpretation, however, in its comments.¹ Rather, it simply asserted that the modification "can not be read so broadly," and based on its review of the modification, it concluded that since the Paxman data were not referred to specifically in the modification, the government's rights to the data were not limited.

In our decision, after carefully reviewing the record, including the contract, its modification, and the parties' submissions, we found that we were unable to ascertain what rights the Coast Guard has to the Paxman data. We pointed out that neither the agency nor the protester had identified the relevant data in the contract or modification and concluded that, under these circumstances, the record showed that the agency had a reasonable basis for refusing to release the data.

In its reconsideration request, the protester discusses in more detail than previously the relevant data in the contract and what it considers the scope of the contract modification. Essentially, the protester is asking us to reconsider our decision based on its more detailed arguments made in response to our decision. We decline to do so.

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which a reversal or modification of the initial decision is warranted as well as specify any errors of law made or information not previously considered. Department of the Air Force, et al.--Recon., 67 Comp. Gen. 272 (1988), 88-1 CPD ¶ 357. Failure to make all arguments during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on all parties' arguments on a fully-developed record--and cannot justify reconsideration of our prior decision. Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546.

Here, American has neither introduced new evidence nor pointed out provisions of the documents in the record that we were not aware of in considering the initial protest. While American attempts to specifically show why, in its view, the Coast Guard has unlimited rights to the Paxman data, the contract provisions upon which it relies were, in fact, carefully considered by our Office in rendering our

¹American also claimed that the modification had no legal effect.

initial decision.² We remain persuaded that the agency had a reasonable basis for concluding that it does not own the necessary rights in the data which would allow the agency to release the data, and the protester's belated attempts to discuss these previously considered provisions provides no basis for reconsideration.

American also disagrees with our conclusion that the agency need only have a reasonable basis for not disclosing the data under the circumstances of this case. According to American, the agency had the burden of showing that it has a legitimate interest in not providing the data. Here the firm is, in essence, reasserting arguments it has already made and disagreeing with our conclusion. This does not provide a basis for reconsideration. 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

²For example, the protester argues that the contract modification, which granted the government only limited rights to certain data, did not apply to the Paxman data, thus leaving the government with unlimited rights to that data. American points to two "lists of data" included in the modification and concludes that they do not encompass the Paxman data. The record shows, however, that these lists were not exhaustive; rather, they described "in part" the data subject to the modification. The modification, in our view, could reasonably be understood as encompassing all technical data supplied under the contract.