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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Varec N.V.--Reconsideration

File: B-247363.7

Date: March 23, 1993

Thomas A. Cocciardi, Esq., McDonald, Cocciardi and Christman, for Varec N.V.
John B. Denniston, Esq., and Thomas W. Krause, Esq., Covington & Burling, for Goodyear Tire & Rubber Co.
Guy R. PietroVito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the requesting party does not provide any facts, evidence or arguments that were not already considered in the prior decision, but merely disagrees with the decision.

DECISION

Varec N.V. requests reconsideration of our decision in Goodyear Tire & Rubber Co., 72 Comp. Gen. 28 (1992), 92-2 CPD ¶ 315, in which we sustained Goodyear's protest of the Department of the Army's award to Varec under invitation for bids (IFB) No. DAAC79-92-B-0022 for pin assemblies for the T-156 tank track shoe assembly. We found that the Army did not have a reasonable basis for qualifying Varec's pin assemblies and including them on the applicable qualified products list (QPL), as required by the IFB, so that Varec's bid offering this product could not be properly accepted for award.

We deny the request for reconsideration.

The IFB contemplated the award of a 12-month requirements contract for pin assemblies with bushings to be used in rebuilding the T-156 track shoe, which is used on the Abrams Main Battle Tank. Because the pin assembly affects the tank's mobility, it is considered a critical item, and the IFB required that the pin assemblies conform to MIL-T-11891B, and be previously tested and approved for inclusion on the applicable QPL. The IFB contained the standard "Qualifications Requirements" clause, as set forth in Federal Acquisition Regulation (FAR) § 52.209-1, which provides notice that award is limited to bidders offering

products on a specified QPL. The clause also states that (1) products must be qualified at the time of award whether or not the product is actually listed on the QPL and (2) if, after the award, the contracting officer learns that an applicable qualification requirement had not been met at the time of award, the contracting officer may either terminate the contract for default or allow performance if that is in the government's best interest and adequate consideration is offered. Goodyear's and Varec's products were identified in the IFB as qualified, although Varec's product was actually added to the QPL after bid opening.

The Army received the following bids from Goodyear, Varec, and Florida Ordinance Corporation (FOC):

FOC	\$1,065,289.20
Varec	1,100,558.91
Goodyear	1,104,157.86

The Army determined that FOC's bid could not be accepted for award because FOC's product could not be qualified within the time required, and made award to Varec.¹ FOC and Goodyear filed timely protests with our Office contesting, respectively, the rejection of FOC's bid and the award to Varec.

We denied FOC's protest in part and dismissed it in part in Florida Ordinance Corp., B-247363.4, Aug. 31, 1992, 92-2 CPD ¶ 138. FOC was unable to pass the bushing qualification test and thus to qualify its product within the time allowed by the agency, and we found that the agency did not act unreasonably in refusing to allow FOC additional time to pass the qualification testing.

We sustained Goodyear's protest because we found that the Army did not have a reasonable basis for qualifying Varec's pin assemblies and including them on the applicable QPL, as required by the IFB, so that Varec's bid offering this product could not be properly accepted for award. Specifically, we concluded, based upon the protest arguments and submissions and upon the hearing testimony,² that the agency had waived material aspects of the bushing tests required by MIL-T-11891B; that is, we found that Varec's

¹FOC's product was qualified approximately 2 weeks after its bid was rejected by the Army.

²A hearing was conducted pursuant to 4 C.F.R. § 21.5 (1992) to receive testimony regarding the requirements of MIL-T-11891B, the agency's review of Varec's certified test data, and whether Varec's product satisfied the requirements of MIL-T-11891B for inclusion on the QPL.

bushing qualification test machine did not conduct the tests in accordance with the requirements of MIL-T-11891B, such that Varec's bushings were subject to less stringent tests than those required of other bidders.³ We recommended that the Army remove Varec's product from the QPL until the product was properly qualified, and that the agency terminate Varec's contract for the convenience of the government and make award to Goodyear, if the agency found Goodyear's price to be reasonable.

Varec essentially disagrees with our determination that Varec's bushings were not tested in accordance with MIL-T-11891B, and argues that we did not give "due deference" to the qualification test results certified by the Belgian Ministry of Defense (MOD) as provided for in a Memorandum of Understanding (MOU) between the United States and Belgium.⁴ Varec argues that, in any event, Goodyear was not prejudiced by the waiver of bushing qualification test requirements for Varec.

Our Bid Protest Regulations require that a party requesting reconsideration show that our prior decision contains either errors of fact or of law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Repetition of arguments made during the original protest or mere disagreement with our decision does not constitute a valid basis for reconsideration. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. Here, Varec has not presented any new facts, evidence, or arguments that were not already considered in our decision. Rather, Varec's objections to our prior decision are to our weighing of the evidence in the record. This does not constitute a valid basis for reconsideration.

For example, Varec disagrees with our determination that the bushing qualification test machine, on which its product was qualified, did not apply the radial load as a square curve over two torsional cycles, as required by MIL-T-11891B, and contends that the "best evidence" of the radial load applied by Varec's machine was the affidavit provided by its own quality control manager, who stated that a square radial load curve was applied. We specifically considered Varec's affidavit in our decision, but did not find this evidence to be persuasive, given the other substantial evidence in the

³FOC, for example, was unable to pass the bushing qualification test on the government-owned test machine in time to receive award under the IFB.

⁴The MOU between the United States and Belgium is set out as Appendix T:139 to the Department of Defense FAR Supplement.

record, including hearing testimony, that showed that Varec's testing did not satisfy the square radial load curve requirements of MIL-T-11891B. While Varec clearly disagrees with our assessment of the weight to be accorded this affidavit and with our ultimate determination concerning its qualification testing, it has not provided any new facts or evidence which would demonstrate an error of law or fact that warrants reversal or modification of our decision.

Similarly, Varec's complaints that we failed to give "due deference" to the certification of Varec's test results by Belgian authorities, as provided for in the MOU, and that Goodyear was not prejudiced by any waiver of qualification test requirements for Varec, were also fully addressed in our prior decision. Again, Varec provides no new arguments, information or evidence that was not already considered, but merely disagrees with our determination that the MOU does not provide for automatic acceptance of Varec's qualification test results as certified by Belgian authorities⁵ and that Goodyear was prejudiced by the waiver of material qualification requirements for Varec.⁶

Varec raises a number of other arguments regarding our weighing and interpretation of the evidence, all of which were considered in our prior decision. As stated above Varec's mere disagreement with our decision provides no basis for reconsideration.

Varec also challenges our protest recommendation to the Army. Specifically, Varec argues that we should not have recommended termination of Varec's contract but allowed the agency to either seek further information from Varec concerning the conduct of its bushing qualification tests or to determine that performance of Varec's contract was

⁵Not only was there no credible evidence that demonstrated that the Belgian certified test results assured conformance with the MIL-T-11891B requirements, but Varec still has not provided any further assurance from the Belgian MOD that supports its arguments that its bushing qualification test machine in fact tested in accordance with the MIL-T-11891B requirements.

⁶Varec has not shown that we erred in finding that Goodyear reasonably may have bid a lower price had Goodyear been aware of the competitive environment in which material solicitation requirements would be waived for some bidders. See MTS Sys. Corp., B-238137, Apr. 27, 1990, 90-1 CPD ¶ 434. In any event, since the agency has not waived the qualification requirements, which it asserts are material, Goodyear was prejudiced by the Army's improper award to a nonresponsive bidder.

in the "best interest of the government," despite Varec's product not being properly qualified. Varec also argues that we did not give the Army the option of canceling the solicitation and resoliciting the pin assemblies under relaxed requirements.


As was stated in our prior decision, the Army has determined that its minimum needs require the procurement of a product that has been qualified for inclusion on a QPL, and the IFB implements this requirement. Accordingly, award should only be made to a bidder whose offered product, at the time of award, has been tested and properly qualified for inclusion on the QPL; where an IFB requires a qualified product, a bid that offers a product that has not been properly qualified is nonresponsive to a material IFB requirement and may not be accepted. 40 Comp. Gen. 352 (1960); Wirt Inflatable Specialists, Inc., B-204673, Dec. 31, 1981, 81-2 CPD ¶ 523. Since the record showed that Varec's offered pin assemblies were not properly qualified in accordance with MIL-T-11891B, as required by the IFB, its bid was nonresponsive to a material solicitation requirement and should not have been accepted. See Florida Ordnance Corp., *supra*. Under these circumstances, termination of Varec's improperly awarded contract is appropriate.

Finally, Varec requests that we "clarify" our decision to explain what the Army must do to qualify Varec's products. As explained in our decision, we recommended that the Army remove Varec's product from the QPL until the Army is reasonably assured that Varec's bushing has satisfied the required qualification tests. This means that the Army must either determine from its own tests or from certified test results provided by Belgian officials, pursuant to the MOU, that Varec's bushings have been tested in accordance with MIL-T-11891B and satisfy the applicable requirements. That is, regarding the deficiencies we identified in Varec's bushing qualification tests, Varec's bushings must be tested on a test machine where the torsional and radial load cycles are maintained in a 4 to 1 ratio and in-phase and where the radial load is applied as a square curve over two torsional cycles. Furthermore, while we did not address the issue of whether Varec's bushings satisfied the pad wear requirements of MIL-T-11891B, the agency should review the certified test

Varec argues that Goodyear is not entitled to award because, now that FOC's product is qualified, FOC is the low, responsive bidder. Varec, however, is not an interested party under our Regulations to request an award to FOC under the IFB. See 4 C.F.R. § 21.0(a). In any event, FOC's bid had already properly been rejected by the Army because it offered a product that was not qualified at the time of award. See Florida Ordnance Corp., *supra*.

data and consider whether Varec's bushings satisfied this requirement or whether the Army needs further information or testing to demonstrate compliance with this requirement.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel