



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Maytag Aircraft Corporation--Reconsideration

File: B-250628.2; B-251152.2

Date: June 14, 1993

William L. Silva 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

Request for reconsideration is denied 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.

DECISION

Maytag Aircraft Corporation requests reconsideration of our
decision in Maytag Aircraft Corp., B-250628; B-251152,
Feb. 2, 1993, 93-1 CPD ¶ 93. In that decision, we denied
Maytag's protest challenging the reasonableness of the
contracting officer's decision to cancel a negotiated
procurement.

Request for proposals (RFP) No. DLA600-92-R-0076, issued by
the Defense Fuel Supply Center, Defense Logistics Agency
(DLA), the procuring activity, for aircraft refueling
services on behalf of the user activity at the Naval Air
Station Whidbey Island, Oak Harbor, Washington, called for
the award of a multiyear (covering more than 1-year's, but
not in excess of 5-year's requirements), firm, fixed-price
contract. Firms on the bidder's mailing list were sent
copies of the RFP and were invited to participate in a non-
mandatory site visit conducted by the user activity. Just
hours prior to the closing time for receipt of proposals,
the user activity requested that the DLA contracting officer
extend the closing time because it learned, after the site
visit, that other firms which had not participated in the
site visit were interested in submitting offers. The DLA
contracting officer did not extend the closing time. Maytag
submitted the only offer. Subsequently, the user activity
requested that the DLA resolicit the multiyear requirements
in order to maximize competition and to reduce costs. After
confirming that there were in fact other firms capable of

performing the requirements and interested in submitting offers if given the opportunity, the DLA contracting officer canceled the RFP and resolicited the requirements under RFP No. DLA600-92-R-0173, under which several firms, including Maytag, submitted offers.

In its initial protest, Maytag argued that the prospect of increased competition did not constitute a reasonable basis for the DLA contracting officer to cancel the original procurement, particularly when the contracting officer could have extended the original closing time for receipt of proposals, thus affording other interested firms the opportunity to compete. In a negotiated procurement, such as this one, the contracting officer has broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. See Sherikon, Inc., B-250152.4, Feb. 22, 1993, 93-1 CPD ¶ 188. In our view, a contracting officer properly may cancel a negotiated procurement based on the potential for increased competition. Research Analysis and Maintenance, Inc., B-236575, Dec. 12, 1989, 89-2 CPD ¶ 543.

Under the circumstances, we concluded that the potential for increased competition provided a reasonable basis for the DLA contracting officer to cancel the original procurement. The record showed that the user activity only made the DLA contracting officer aware of the potential for increased competition just hours prior to the closing time. We stated that while the contracting officer ordinarily could have extended the closing time so that these firms which had discussions with the user activity could have submitted offers, the failure of the contracting officer to do so in the few hours remaining before the closing time did not bar the contracting officer from accomplishing the same end after the closing time. In this regard, what the contracting officer basically did was to take corrective action for failing to extend the closing time in order to afford all responsible firms the opportunity to compete. This corrective action was consistent with the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), which requires contracting agencies to obtain full and open competition through the use of competitive procedures. "Full and open competition" is obtained where all responsible sources are permitted to submit sealed bids or competitive proposals. 10 U.S.C. § 2304(a)(2).

Maytag also argued that as the only firm submitting an offer, it was entitled to an award for at least 1-year's requirements pursuant to a solicitation clause which provided that the "[g]overnment reserves the right to award a contract on a single-year basis in the event that only one responsive offer is received on the multiyear requirement."

We stated that under this clause, the agency only reserved, but did not guarantee, that it would award a contract, even on a single-year basis, if only one offer was received.

In its request for reconsideration, Maytag disagrees with our initial decision and reiterates that notwithstanding the purported basis for cancellation, the potential for increased competition, which in fact was obtained, was not a reasonable basis for the DLA contracting officer to cancel the original procurement. Maytag maintains that the contracting officer was required to award it a contract for a minimum of 1-year's requirements pursuant to FAR § 17.103-4(a) which provides that "[w]hen the acquisition is on the basis of price only, the contracting officer shall award to firms offering the lowest evaluated unit price whether that price is on a single-year or a multiyear basis," and FAR § 17.103-4(d)(2) which provides that "if only one responsive offer is received on the multiyear requirements from a responsible offeror, the contracting officer shall proceed . . . [by] mak[ing] [an] award to the lowest evaluated offeror on the single-year basis, even though the multiyear price submission may represent the lowest evaluated price submission" In this case, since the award was to be made on the basis of price and since Maytag was the only firm which submitted an offer, Maytag argues that in accordance with the mandatory "shall" language of the referenced FAR sections, it was entitled to an award for a minimum of 1-year's requirements as the low priced offeror.


Multiyear contracting is a special contracting method that may be used in a negotiated procurement. FAR § 17.102-2. As we explained in our initial decision, in a negotiated procurement, a contracting officer has broad discretion in deciding whether to cancel the procurement; a reasonable basis to do so--for example, the potential for increased competition--will suffice. Here, while FAR §§ 17.103-4(a), (d)(2) contain mandatory language addressing how the contracting officer should proceed if only one firm submits an offer for the multiyear requirements, we believe that these FAR sections assume, as a threshold matter, that the contracting officer has determined to proceed with the award in light of receiving only one offer rather than canceling the solicitation and resoliciting the requirements in order to comply with the CICA requirement for "full and open competition."

In our view, these FAR sections addressing awards for multiyear requirements must be read in conjunction with FAR part 15 describing the policies and procedures for contracting by negotiation, specifically, FAR § 15.608(b)(4) which provides that the contracting officer may reject all offers received under a negotiated procurement if

cancellation is clearly in the government's interest. We do not think that multiyear contracting conducted as a negotiated procurement is exempt from the policies and procedures outlined in FAR part 15, including FAR § 15.608(b)(4). Accordingly, we conclude that FAR §§ 17.103-4(a), (d)(2) do not limit the contracting officer's discretion to cancel a multiyear, negotiated procurement in order to comply with the statutory requirement for full and open competition.

Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1993), 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. Maytag's repetition of arguments made during our consideration of the original protest and its mere disagreement with our prior decision do not meet the standard 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