



Comptroller General
of the United States

211206

Washington, D.C. 20548

Decision

Matter of: Tri-Star Industries, Inc.--Reconsideration

File: B-254767.3

Date: June 28, 1994

David M. Sheehan, Esq., Kollman & Sheehan, P.A., for the protester.

John P. Love, Esq., for Van Ommeren Shipping (USA) Inc., an interested party.

John M. Binetti, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision denying protest of award is denied where protester fails to show the decision contained errors of fact or law warranting reversal of the decision.

DECISION

Tri-Star Industries, Inc. requests reconsideration of our decision in Tri-Star Indus., Inc., B-254767; B-254767.2, Jan. 18, 1994, 94-1 CPD ¶ 20, in which we denied Tri-Star's protest of an award of a contract to Van Ommeren Shipping (USA) Inc. under request for proposals No. N62387-93-R-8512, issued by the Military Sealift Command, Department of the Navy, for a vessel to transport containerized cargo between the continental United States and Praia Da Vitoria, Azores.

We deny the request for reconsideration because the request provides no basis for reconsidering our prior decision.

Tri-Star's proposal was ranked third in line for award behind Van Ommeren's proposals for the use of the vessels Big Orange X or Strong Texan, which were ranked, respectively, first and second in line for award. Tri-Star, the incumbent contractor, protested that Van Ommeren's proposals should have been rejected for failure to meet

certain solicitation requirements regarding United States-flag status and ability to perform as scheduled; Tri-Star also protested the agency's affirmative determination of the awardee's responsibility.

In our January 18 decision denying the protest, we stated that Tri-Star could only be considered an interested party under our Bid Protest Regulations, 4 C.F.R. Part 21 (1994), to protest the award to Van Ommeren for use of the Big Orange X if it successfully protested the sufficiency of the intervening proposal by Van Ommeren for use of the Strong Texan. Tri-Star requests reconsideration of our determination that the protester was not an interested party to protest the award to Van Ommeren for use of the Big Orange X in light of our denial of the protest regarding the Strong Texan. Tri-Star states that since the agency did not propose award on the basis of the Strong Texan, its protest of that vessel was not ripe for review by our Office and that we should have instead reviewed the merits of its protest of the Big Orange X.

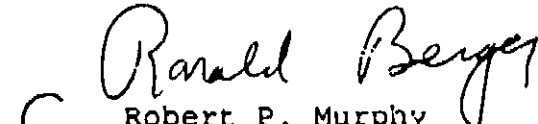
Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised; the benefit of relief sought by the protester; and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Van Ommeren's proposal of the Strong Texan is the intervening offer which would precede the protester's ineligibility under the solicitation. Therefore, the agency's determination of its acceptability was properly reviewed by our Office to determine whether the protester was in fact an interested party to protest the actual award. See Son's Quality Food Co., B-251304.3, Aug. 9, 1993, 93-2 CPD ¶ 86.

As to Tri-Star's request for reconsideration of our denial of the protest of the acceptability of the Strong Texan proposal and Van Ommeren's responsibility, the protester in essence repeats arguments it made previously, which were carefully reviewed by our Office, and expresses disagreement with our decision. Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our 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 disagreement¹ 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.


Robert P. Murphy
Acting General Counsel

¹Tri-Star contends that the January 18 decision incorrectly states that Van Ommeren's proposal adequately demonstrated requisite control over the Strong Texan since the vessel was then subject to the terms of another contract with the Navy. The request for reconsideration presents no new information warranting reversal of our decision since the protest record as a whole demonstrates the reasonableness of the agency's acceptance of the firm's statements regarding the vessel's availability and sufficient control over the vessel; even if the vessel was still under the final terms of the prior contract, as Tri-Star contends, the firm timely sought release of any remaining obligations from the Navy which, in making its technical acceptability determination, maintained control over any such condition of availability.