



Comptroller General  
of the United States

Washington, D.C. 20548

345289

## Decision

**Matter of:** Department of the Army--Reconsideration

**File:** B-254979.2

**Date:** September 26, 1994

Vera Meza, Esq., U.S. Army Materiel Command, for the agency, Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration is denied where the request is based on information that was available to, but not proffered, by the requester during consideration of the protest.

### DECISION

The Department of the Army requests that we reconsider our decision Ramco Equip. Corp., B-254979, Feb. 2, 1994, 94-1 CPD ¶ 67. In that decision, we sustained Ramco's protest that the specifications in invitation for bids (IFB) No. DAAC79-93-B-0078, for an agitated tank washer degreasing machine could not be met and overstated the agency's needs.

We deny the request for reconsideration.

The degreasing machines are used for removing dirt, grease, sludge, and other foreign material from engine and vehicle parts and miscellaneous ordnance items made from various metals. The machines clean the parts by immersing and agitating them in recirculated, hot water or a water/detergent solution. As explained in our prior decision, section 3.5 of the IFB purchase description required the machines to strip 98 percent of all grease, oil, and common soils, inside and outside, from items in 30 minutes or less, without precleaning or pretreatment. Section 3.7.3 provided, "[m]achine manufacturer shall recommend a generic type chemical compound suited to the types of materials (aluminum, brass, copper, magnesium, steel) being washed and soils to be removed. The chemical shall not leave any residue or cause any discoloration of the materials being cleaned. . . ."

Ramco protested that no generic chemical compound is available that would clean all of the potential soils from all the different metal compositions without leaving a residue or causing discoloration. To support this position, Ramco submitted letters from two chemical specialist companies stating that a generic chemical does not exist that will meet the solicitation performance requirements.

In response to the protest, the Army stated that it recently received three responsive bids and awarded a contract under a solicitation that included the same specifications. We asked the Army if the chemical it received under that contract was meeting the specifications--that is, whether it was cleaning all the various metals, without discoloring any of the parts and without leaving a residue despite the fact that there is no rinse cycle. As we explained in our original decision, the Army responded that the cleaning chemical provided by the awardee under the other contract had lasted longer than required by the specifications and that the machine is used to remove grease and oils "with subsequent cleaning of parts by other means if required."

In sustaining the protest, we stated that, in spite of our request that it address whether the chemical being supplied under the other contract is meeting the specifications, the Army did not state or otherwise explain that the chemical was cleaning all the various metals without discoloring any of the parts and without leaving a residue. We also stated that the Army did not indicate that it had conducted market research, as required by Federal Acquisition Regulation § 10.002, to determine if the chemical it specified was in fact available. Since the protester also provided information from chemical specialists who explained why a chemical does not exist that will meet the performance requirements and the record was devoid of information to contradict the protester's position, we concluded that the protester was correct that the specification cannot be met.

Our decision also noted that the Army appeared to tacitly acknowledge that the machine and cleaning chemical it purchased under the earlier contract was not working as required since a contracting officer's representative familiar with that contract stated that the chemical is used to remove grease and oils, "with subsequent cleaning by other means if required," and the specifications did not allow for subsequent cleaning. We therefore concluded that it appeared that the Army was also overstating its minimum needs in the protested solicitation and that the solicitation was defective for this reason also.

In sustaining the protest, we recommended that the Army determine what its minimum needs are and provide

specifications that reflect those needs only, amending the solicitation, or issuing a new one as appropriate.

In its reconsideration request, the Army asserts that our decision erroneously concluded that the machine it purchased under the previous contract was not working as the specifications required. Specifically, the Army now explains that the subsequent cleaning which it referred to in response to our inquiry was any cleaning necessary to prepare the components for painting or plating. According to the Army, the specifications only cover cleaning of all grease, oil, and soils, not the cleaning some components must undergo for repainting or plating. The Army, therefore, requests that we reconsider our decision to the extent that our conclusion that the specifications are impossible to meet is based on our belief that the components are permitted to undergo additional cleaning after they are cleaned in the degreasing machines.

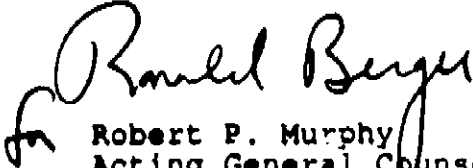
Under our Bid Protest Regulations, a request for reconsideration must specify alleged errors of law made or information not previously considered by our Office. 4 C.F.R. § 21.12(a) (1994). In order to provide a basis for reconsideration, information not previously considered must have been unavailable to the party seeking reconsideration when the initial protest was being considered. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. A party's failure to make all arguments or submit all information available during the course of the initial protest undermines the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of the parties' arguments on a fully-developed record--and cannot justify reconsideration of our prior decision. Id.

Here, the Army's request for reconsideration is based on information and an argument that was available during the initial protest, but was not presented at that time. That is, during the initial protest the Army could have explained that the subsequent cleaning referred to was cleaning required for the purpose of painting or plating the components. Under the circumstances, the Army's request does not provide a basis for reconsideration.

In any case, however, and more importantly, our conclusion that the specifications cannot be met was not based on our finding that the machine the Army purchased under its prior contract may not have been meeting the specifications because the Army permitted subsequent cleaning of parts. Rather, as discussed above, our conclusion that the specifications are impossible to meet was based on the fact that there was no information in the record which demonstrated that a chemical existed that met the

specifications and, despite repeated requests for such information, the Army did not provide any. In this respect, as explained, in spite of the evidence submitted by the protester, and in spite of our specific requests, the Army declined to address whether the chemical used under the earlier contract is cleaning all the various metals listed in the specifications without discoloring them and without leaving a residue.<sup>1</sup>

The request for reconsideration is denied.

  
for Robert P. Murphy  
Acting General Counsel

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<sup>1</sup>In its reconsideration request, the Army states that, during consideration of the original protest, the contracting officer's representative for the other contract "verified . . . that the cleaning properties of the chemical provided by the manufacturer meet the specification." On the contrary, the statement of the contracting officer's representative included no such assertion.