



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Soltec Corp.--Reconsideration

**File:** B-234597.4

**Date:** September 20, 1989

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### DIGEST

Request for reconsideration of prior decision is denied where protester does not establish any factual or legal errors in the prior decision.

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### DECISION

By letter of August 24, 1989, Soltec Corp. requests reconsideration of our decision of August 21, 1989.<sup>1/</sup> In that decision, we: (1) dismissed, as untimely filed under section 21.12(b) of our Bid Protest Regulations (4 C.F.R. Part 21 (1989)), the company's July 26 request for reconsideration of our decision of June 16, 1989,<sup>2/</sup>; and (2) also dismissed, as untimely filed under sections 21.2(a)(1) and 21.2(a)(2) of our Regulations, Soltec's new protest against an award of a contract under the same procurement.

The protested RFP was for the supply of "Thermal Writing Strip Chart Recorders," Western Graphtec model No. WR350Z-8 "or equal," having "sprocket drive operation," a design requirement which Soltec has consistently protested. The recorders are to be used at the aircraft and missile test range facility, China Lake.

In its original protest which gave rise to our June 16 decision, Soltec contended that the specification requirement that the recorder paper be sprocket driven improperly restricted the competition for the RFP only to

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<sup>1/</sup> Soltec Corp.--Recon., B-234597.3, Aug. 21, 1989, 89-2 CPD ¶ \_\_\_\_.

<sup>2/</sup> Soltec Corp.; Astro Med, Inc., B-234597; B-234597.2, June 16, 1989, 89-1 CPD ¶ 568.

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Western Graphtec, the ultimate awardee under the RFP<sup>3/</sup>, which uses sprocket drive rather than the "friction drive" used in Soltec's recorder. The Navy maintained that it properly specified recorders using sprocket drive because of the severe desert environment found at the China Lake test range (the northwest corner of the Mojave Desert where extreme temperature variations are present along with dust and grit) which, in the Navy's view, requires sprocket drive recorders in order to assure consistent, uniform paper recording of weapons systems test results. Specifically, the Navy stated that the recorders will be housed mainly in portable trailers which are not permanently air-conditioned, and the recorders are not, therefore, protected from the desert environment. Based on our review of the record, we concluded that the protester had not shown the Navy's specification requiring sprocket drive recorders to be clearly unreasonable.

By letter dated July 26, 1989, received at our Office on August 2, Soltec requested reconsideration of our June 16 decision based generally on its previous assertions that the specification for sprocket drive was improper and that its friction drive recorder would perform at China Lake equal to, or better than, Western Graphtec's sprocket drive recorder.

Our August 21 decision concluded that Soltec's July 26 request for reconsideration, which basically restated its initial protest, and which was filed more than 1 month after the date Soltec was presumed to have received our June 16 decision, was clearly untimely. See 4 C.F.R. § 21.12(b). Consequently, in our August 21 decision we dismissed Soltec's July reconsideration request.

Soltec's August 24 letter generally requests reconsideration of this part of our August 21 decision. Although Soltec refers to certain prior correspondence with our Office and the Navy, it does not specify any error of law made, or information not previously considered, by our Office in dismissing Soltec's July request for reconsideration. Consequently, we deny this part of Soltec's August 24 request for reconsideration. See 4 C.F.R. § 21.12(a), which provides that we will not consider any request for reconsideration which does not contain a detailed statement of the factual and legal grounds upon which reversal or

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<sup>3/</sup> The Navy postponed the receipt of proposals until after we had resolved Soltec's initial protest of the RFP's specifications. Western Graphtec, the highest-priced of the three offerors, was the only technically acceptable one.

modification is deemed warranted, specifying any errors of law made or information not previously considered.

The other part of Soltec's August 24 letter has to do with our August 21 dismissal of Soltec's new protest against the Navy's July 18 award to Western Graphtec. Soltec's new protest contended that: (1) the requirement should have been contracted for under sealed bid, rather than negotiated, procedures; (2) the Navy improperly refused to extend the July 11 closing date for the RFP notwithstanding Soltec's June 30 request that it do so; (3) the Navy refused Soltec's request to have appropriate Navy employees visit the China Lake test range facility to determine the legitimate needs of the test range for this requirement; and (4) the Navy's representatives refused to meet with Soltec in late June 1989 to discuss the RFP. Additionally, by letter filed with us on August 9, Soltec alleged that the award had been made at an unreasonably high price because, as a result of our not disturbing the specification requirement for sprocket drive, the eventual awardee knew it was in a "sole-source" position.

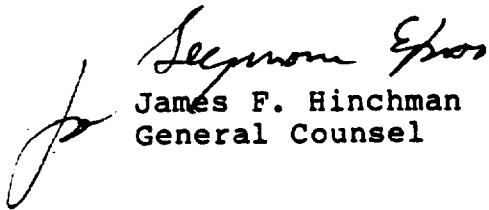
We concluded that all of these new grounds of protest were also untimely. The first new basis of protest concerned an RFP defect which, however, was not protested prior to the RFP's closing date. See 4 C.F.R. § 21.2(a)(1). The next three bases of protest, involving other than RFP defects, should have been made (but were not so made) the subject of a protest no later than 10 working days from the RFP's July 11 closing date when Soltec should have known that the Navy would not postpone the closing date and would not take Soltec's other requested action. See 4 C.F.R. § 21.2(a)(2). The last ground of protest was untimely because it was not made the subject of a protest within 10 days of July 18, 1989, when Soltec was telephonically informed by the Navy of the price of the Western Graphtec award. Id.

Soltec also generally requests reconsideration of our dismissal of its new protest and, while referring to its prior correspondence with our Office and the Navy, does not specify any error of law made, or information not previously considered, by our Office in dismissing the first four, new grounds of protest. Consequently, we also deny Soltec's August 24 request for reconsideration as to these four new grounds of protest.

As to the fifth ground of the new protest--that the award was made at an unreasonable price because the awardee knew it was in a "sole source" position--Soltec argues that it should not have been charged with knowledge of this basis of protest through the Navy's July 18 telephone call, but was

entitled to await the "formal results of bid in the mail [on August 1]." Soltec also argues that, in any event, it first transmitted this fifth ground of protest to the Navy on July 19. We reject both these arguments.

First, the July 18 telephonic notice to Soltec of the Western Graphtec award and the award price was sufficient, coupled with Soltec's prior assertion in its initial protest that competition under the RFP was improperly restricted only to Western Graphtec, to constitute knowledge of this fifth ground of protest. The telephone notice conveyed the final information from which Soltec later derived this ground of protest. Second, Soltec's July 19 protest to the Navy did not assert that award had been made at an unreasonably high price because Western Graphtec knew it was in a "sole-source" position, but rather asserted, insofar as is pertinent to this ground of protest, only that the award was an improper sole-source contract; consequently, Soltec, in fact, did not first file this ground of protest with the Navy in July. Consequently, we also deny the request for reconsideration as to the fifth ground of protest.

  
James F. Hinchman  
General Counsel