



Comptroller General
of the United States

Washington, D.C. 20548

91-2 CPD 38

Decision

PR

Matter of: Ricoh Corporation--Reconsideration

File: B-242052.3; B-242052.4

Date: July 10, 1991

Joseph J. Petrillo, Esq., Petrillo & Hordell, for the protester.

David S. Cohen, Esq., Cohen & White, for General Kinetics, Inc., Cryptek Division, an interested party.

Clifton M. Hasegawa, Esq., Defense Communications Agency, for the agency.

David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Awardee's argument that agency improperly evaluated protester's proposal as offering a domestic end product for Buy American Act purposes does not provide a basis for reconsidering decision that award was improper because agency had improperly evaluated awardee's proposal as offering a domestic end product; General Accounting Office will not consider new arguments raised by interested party in request for reconsideration where those arguments could have been raised during consideration of the initial protest.

DECISION

Ricoh Corporation requests reconsideration of our decision in General Kinetics, Inc., Cryptek Division, B-242052.2, May 7, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ ____, sustaining the protest of General Kinetics, Inc., Cryptek Division, against the Defense Communications Agency's (DCA) award to Ricoh of a contract for secure digital facsimile fax machines.

We affirm our decision.

The solicitation, request for proposals (RFP) No. DCA200-90-R-0038, requested proposals for two versions of fax machines, including a version complying with the TEMPEST standard on limiting compromising emanations and a second, non-TEMPEST version, and for interconnecting cables, fax paper and supplies, installation, training and maintenance. The RFP

included the clause set forth at Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.225-7001, which implements the Buy American Act, 41 U.S.C. § 10(a) et seq. (1988), and provides for the addition of an evaluation differential to offers proposing to furnish foreign end products when they are in competition with offers of domestic end products. A domestic end product is defined as an "end product manufactured in the United States if the costs of its . . . components which are mined, produced or manufactured in the United States exceeds 50 percent (50%) of the cost of all its components." DFARS § 252.225-7001(a)(6)(ii).

We sustained Cryptek's protest against the award to Ricoh with respect to the schedule items for the non-TEMPEST fax system on the basis that the agency had improperly evaluated Ricoh's non-TEMPEST system as a domestic end product for Buy American Act purposes. We found that although Ricoh's imported Japanese commercial fax machine underwent some manufacturing operations in the United States, the essential nature of the machine was not altered and it remained a foreign component of the fax system, thereby rendering the overall fax system as nondomestic. We further concluded that when the required Buy American evaluation differential was added to Ricoh's otherwise low offer for the non-TEMPEST units, Cryptek's offer for those schedule items became low and Cryptek therefore was entitled to award.

In its submissions to our Office, Ricoh challenges Cryptek's self-certification of its own non-TEMPEST fax system as a domestic end product. According to Ricoh, notwithstanding any manufacturing operations performed on it in the United States, Cryptek's non-TEMPEST fax machine essentially remained a foreign component, thereby rendering the overall fax system of nondomestic origin.


We will not consider this argument on reconsideration. The application of the Buy American Act, the consequent evaluation of prices, and the entitlement to award based on that evaluation all were directly at issue in the initial protest. In our view, Ricoh was obligated to raise any arguments concerning the application of the Buy American Act to Cryptek's proposal during the initial protest. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum to produce fair and equitable decisions based on consideration of both parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Since Ricoh's argument in this regard was available but not raised during our consideration of the initial protest, it does not provide a basis for

reconsideration. Techniarts Eng'g; Dep't of the Navy--Recon., B-238520.3; B-238520.4, June 27, 1991, X91-1 CPD ¶
Department of the Army--Recon., B-237742.2, supra. X

Ricoh also questions our conclusion that Cryptek's proposal for the non-TEMPEST fax system becomes low when the Buy American Act evaluation differential is added to Ricoh's offer. According to Ricoh, any award for the non-TEMPEST schedule items must also include that portion of the schedule items for cable adapters, power connections, other related equipment, consumable materials, installation and maintenance that will be used with the non-TEMPEST fax system. Since our prior decision did not specifically discuss these items, Ricoh maintains that our conclusion that Cryptek was entitled to award for the non-TEMPEST units was based on incomplete information.

Based upon our review of the prices and, as confirmed by the agency, including the accessories in the calculation does not alter the fact that Cryptek's price for the non-TEMPEST fax systems becomes low when proposals are properly evaluated by addition of an evaluation preference to Ricoh's price. Specifically, although Ricoh's price for some of the items in question is lower, Cryptek's overall price for the connections, adapters, consumable materials, installation and maintenance is significantly lower than Ricoh's price. Thus, as we indicated in our initial decision, Cryptek's offer for the non-TEMPEST fax systems, after addition of the Buy American Act differential to Ricoh's price, is low. Cryptek therefore is entitled to award for those systems.

Our prior decision is affirmed.


James F. Hinchman
General Counsel