



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Saturn Industries--Reconsideration

File: B-261954.4

Date: July 19, 1996

George W. Ash, Esq., Dykema Gossett, for the protester.

Glenn G. Wolcott, Esq. and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requesting party reiterates arguments raised during the initial protest, raises arguments that could have been but were not raised during the initial protest, and fails to demonstrate that the decision contains errors of fact or law.

DECISION

Saturn Industries requests reconsideration of our decision, Saturn Indus., B-261954.3, Jan. 5, 1996, 96-1 CPD ¶ 9, in which we denied Saturn's protest challenging the provisions of solicitation No. SPO750-95-R-0213, issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency (DLA). The solicitation sought proposals to provide 515 hydraulic motor race assemblies, national stock number (NSN) 2530-01-109-4375, to be used in the transmission of the M2 and M3 Bradley Fighting Vehicle. Saturn asserts that our decision failed to adequately address various protest issues.

We deny the reconsideration request.

The challenged solicitation was issued on May 22, 1995, and provided that one of the assembly components (the race) was source controlled.¹ In that regard, the solicitation established qualification requirements with which an offeror must comply to become a qualified source, stating:

"Qualification testing of [the race component will require a 100 hour dynamometer test (\$75,000) [and] 6000 mile on-vehicle test (\$25,000) and \$25,000 for analysis and final report before source approval can be

¹The solicitation identified Martin Marietta Defense Systems (now Lockheed Martin) and Kaydon Corporation as the only approved sources.

given Contractor would need to supply eight [race components] . . . along with the above funds, to the government for testing. Testing would take six to nine months."

In its protest, Saturn challenged the solicitation's qualification requirements on the basis that it had not been given a reasonable opportunity to qualify its product. Specifically, Saturn asserted:

"As written, the solicitation requires delivery of the race assemblies within 150 days of contract award. The Item Description indicates that qualification testing requires six to nine months. Therefore it is not possible for any potential offeror to compete in this procurement if its offered product is not qualified, or at least one to four months into testing, at the time of award.

". . . DCSC has therefore, in effect, unreasonably limited the competition by specifying lengthy testing requirements which cannot be met by unqualified offerors. This violates the requirement in 10 U.S.C. § 2319 that nonapproved sources be given a reasonable opportunity to qualify."

As we pointed out in our decision, the record belied Saturn's representations that it had not been afforded an adequate opportunity to qualify its component. Specifically, the record established that, in December 1992, Saturn was awarded a contract to supply the race assemblies being procured under the challenged solicitation.² There, as here, the solicitation provided that the race component was source controlled and identified Martin Marietta and Kaydon as the qualified sources. By letter to the agency dated December 22, 1992, Saturn requested waiver of the source control requirements.³ In February 1993, Saturn submitted a request to become a qualified source. Saturn was subsequently advised of the specific requirements it must meet to qualify as a source for the race component; those requirements were identical to the qualification requirements in the solicitation here. Specifically, by letter dated June 8, 1993, Saturn was advised that qualification testing would include a "100 hour dyno test" and a "6000 mile on-vehicle test," that "Saturn would need to supply eight parts [for testing]," that "testing would take 6-9 months," and that "Saturn would be required to pay for all costs associated with qualification." By letters dated July 19, September 15, and December 10, 1993, and February 8, 1994, DLA reiterated the qualification requirements. Despite the

²Saturn's prior contract for the race assemblies, No. DLA 770-93-C-3520, was awarded on December 15, 1992.

³The agency formally denied that request by letter dated July 19, 1993.

government's clear statements regarding the ongoing need for the qualification requirements, Saturn failed to submit any components for qualification testing, and made no deliveries under its prior contract. That contract was terminated by the government in July 1994.

Based on the facts summarized above, our decision rejected Saturn's assertion that it had not been given a "reasonable opportunity to qualify [its product]." The record was clear beyond dispute that Saturn had been repeatedly advised of the precise testing requirements which its protest challenged. Despite the agency's multiple requests that Saturn submit its component for testing, Saturn failed to do so--and the record indicates that Saturn has yet to manufacture any of those components. Saturn's reconsideration request presents no new evidence or argument demonstrating factual or legal errors in our decision regarding this matter; accordingly, there is no basis for reconsideration regarding this issue. See John Peeples--Recon., B-233167.3, Dec. 9, 1991, 91-2 CPD ¶ 522.

Saturn also complains that our decision failed to properly address its assertion that Martin Marietta and Kaydon were not subjected to the current qualification testing requirements and, therefore, are not properly qualified sources. Repeating assertions made in its protest, Saturn asserts that "the qualifications of both Lockheed Martin and Kaydon are at a minimum, not properly documented and more likely, never occurred."

In responding to Saturn's protests regarding this issue, the agency explained that the race assemblies were developed by Kaydon and General Electric Corporation (Martin Marietta's corporate predecessor for this item) between 1984 and 1986 and that, during that period, the race component was subjected to a series of tests and inspections integrated within the development process; however, most of the documentation relating to that development no longer exists. Notwithstanding the current lack of documentation, the agency pointed out that the operational testing requirements to which Saturn objects are intended to demonstrate the component's capability to perform under actual operating conditions, and that the components currently being provided have repeatedly been, and continue to be, tested under such conditions.

In our decision, we specifically stated: "Saturn asserts that the race components being provided by the previously approved sources were not subjected to the testing requirements that are now required." Our decision rejected that argument noting that, notwithstanding the inability of the agency to, at this time, produce documentation of its prior development efforts, Saturn offers no rational argument to support its assertion that, in developing the race assembly as a new component, the agency failed to subject it to operational testing. Similarly, we noted that Saturn did not rebut the agency's explanation that the currently fielded components have repeatedly demonstrated their capability to perform under actual operating

conditions and, as such, are continuously subjected to the same testing requirements which Saturn asserts were never performed. Saturn's reconsideration request offers no new arguments or evidence on these issues and merely reflects its disagreement with our prior decision, which does not constitute a valid basis for reconsideration. See, John Peeples--Recon., supra.⁴

Saturn also complains that our decision failed to separately discuss whether the agency has satisfied the procedural requirements associated with its obligation to examine and revalidate the qualification requirements. See 10 U.S.C. § 2319(e); FAR § 9.202(f) (FAC 90-2). Saturn did not raise this matter in its protest; nonetheless, in seeking reconsideration, it points to the fact that the agency was requested to provide documents pertaining to the maintenance and revalidation of the qualification requirements. Significantly, Saturn does not question the actual, ongoing need for the qualification requirements. In particular, Saturn's reconsideration request expressly states: "[Saturn] has not asserted that the need for qualification [of this safety critical item] is improper." As our decision pointed out, the race assemblies are properly classified as "safety critical" in that component failure during operation could result in personal injury to military personnel.⁵ In light of Saturn's express acknowledgment of the legitimate, ongoing need for qualification requirements, Saturn's assertion regarding the agency's alleged failure to properly document its revalidation provides no basis to object to the agency's actions. Moreover, Saturn's initial protest did not assert that the agency failed to comply with the revalidation requirements. In short, Saturn has neither raised the issue now in a manner which would provide a basis to sustain its protest, nor did it raise the issue in any meaningful fashion in its initial protest when it could and should have done so.

⁴It appears that Saturn's primary objective is to have the government, rather than Saturn, bear the testing costs. As we noted in our decision, offerors are generally required to bear their own costs of qualification testing. See 10 U.S.C. § 2319(b)(3); Federal Acquisition Regulation (FAR) § 9.202(a)(1)(ii). Agencies are permitted, under certain circumstances, to bear such costs. See 10 U.S.C. § 2319(d)(1)(B); FAR § 9.204(a)(2). Here, the record presented no indication that the agency had abused its discretion; accordingly, this issue provided no basis to sustain Saturn's protest.

⁵FAR § 46.203 establishes criteria for designating a product as "safety critical," thereby necessitating qualification testing requirements.

Finally, Saturn asserts that our decision failed to adequately address its allegation of an organizational conflict of interest with regard to Martin Marietta. Saturn's protest in this regard was based on the fact that Martin Marietta provides engineering support services for the Bradley Fighting Vehicle under a systems technical support contract and, as such, will assist the agency in testing Saturn's component.

Since Saturn has yet to manufacture and submit its component for testing, we found no basis to sustain Saturn's protest on the basis of an anticipated conflict of interest. Saturn appears to be seeking reassurance that the agency will objectively evaluate its component if and when Saturn manufactures and submits the component. In response to this concern, the agency has provided express assurance that it will objectively evaluate the component. Saturn's speculation that the agency will fail to perform an objective evaluation merely anticipates improper agency action and, therefore, is not for consideration. See, e.g., Sea-Land Serv., Inc., B-246784.6; B-253068, Aug. 5, 1993, 93-2 CPD ¶ 84; Harbor Branch Oceanographic Inst., Inc., B-243417, July 17, 1991, 91-2 CPD ¶ 67; Jantec, Inc., B-243192, Mar. 14, 1991, 91-1 CPD ¶ 289; General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512; Logistical Support, Inc., B-218465, Apr. 18, 1985, 85-1 CPD ¶ 447; Riggins Co., Inc., B-214460, July 31, 1984, 84-2 CPD ¶ 137; Surgical Instrument Co. of Am., B-215026, July 25, 1984, 84-2 CPD ¶ 112; Afri-American Supply Co., B-206137, Feb. 17, 1982, 82-1 CPD ¶ 141.

The request for reconsideration is denied.

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