



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hi-Shear Technology Corporation--Reconsideration

File: B-261206.2

Date: February 12, 1996

Peter B. Jones, Esq., Jones & Donovan, for the protester.

Mary E. Shallman, Esq., Gray Cary Ware & Freidenrich, for Teledyne Ryan Aeronautical, McCormick Selph Electronics, an interested party.

David M. Hill, Esq., and Kathryn M. Burke, Esq., Department of the Air Force, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requesting party merely expresses disagreement with prior decision and continues argument that contracting officer did not have discretion, where solicitation provided for consideration of Blue Ribbon Contractor (BRC) status, to consider price in the selection decision; prior regulation, provided by protester with its initial filing, and current regulation, provided by agency in its response to the protest, both grant the contracting officer discretion to make award to a lower-priced non-BRC, considering similar factors.

DECISION

Hi-Shear Technology Corporation requests reconsideration of our decision, Hi-Shear Technology Corp., B-261206, Aug. 31, 1995, 95-2 CPD ¶ 97, denying its protest of the award of a contract to Teledyne Ryan Aeronautical, McCormick Selph Electronics, under request for proposals (RFP) No. F41608-95-R-10105, issued by the Department of the Air Force for aircraft recovery sequencers. Hi-Shear, a participant in the Air Force Materiel Command's (AFMC) Blue Ribbon Contractor (BRC) program, contended that the agency did not consider the protester's BRC status in its selection decision, contrary to solicitation provisions.

We deny the request for reconsideration.

The selection decision was a choice between Teledyne, which offered the lower price, and Hi-Shear, a BRC. In making this decision, the contracting officer noted that Teledyne was producing the same sequencers for McDonnell Douglas, possessed the excess capacity to deliver an additional 30 per month, and already had the long-lead time items in-house. Hi-Shear, by contrast, although a designated BRC, did not have extra long-lead time items, might not be able to meet short-term, urgent requirements, and would have to hire more assemblers, which might have a

short-term impact on quality. Although both offerors were qualified sources and equally capable of manufacturing the sequencers, the contracting officer found little risk in selecting the lower-priced contractor, Teledyne, although it was not a BRC.

As we noted in our earlier decision, the solicitation provided that the selection decision would consider the AFMC BRC Program, as well as price. The BRC program, which applies to spare parts acquisitions, recognizes that responsible contractors have "varying degrees of quality and delivery performance," and provides a framework for contracting officers to exercise business judgment in making selection decisions normally dictated solely by price. See AFMC Federal Acquisition Regulation Supplement (AFMC FARS) Part 5315.605-90. Our decision noted that the AFMC FARS set forth factors for consideration in deciding whether to select a higher-priced BRC for award. Although the Air Force had provided our Office with a copy of the current regulation, dated September 30, 1994, we reviewed the selection decision in terms of the factors listed in a prior version of the regulation (dated July 1, 1992), which Hi-Shear had submitted with its protest.

In our prior decision, we agreed with the Air Force that while it was permitted under the BRC program to make award based on considerations other than price, neither the language of the solicitation nor the underlying regulations required it to do so. The underlying regulation essentially requires an award in the government's best interest and, where the BRC is higher in price, requires a written justification regardless of which offeror—BRC or non-BRC—the contracting officer chooses. See AFMC FARS § 5315.605-90(h)(9)(ii),(iii). We found the Air Force's consideration of the factors set forth in the regulation both reasonable and consistent with that guidance.

In requesting reconsideration, Hi-Shear essentially argues that the factors for consideration differ between the older regulation that it cited in its protest and the newer version. Hi-Shear suggests that our decision would have been different had we looked at the decision in terms of the factors listed in the newer regulation.

Hi-Shear is incorrect. The factors listed in the earlier regulation are as follows: required delivery schedule; complexity of items; criticality of items; size of order; need for first article; absolute dollar difference; new contractor's past quality and delivery performance; and overall cost to the government. The current regulation calls for consideration of the need for delivery "within stated time constraints and quality parameters."¹ Thus, while the specific language has changed, the current version of the regulation directs the contracting officer to consider essentially the same factors that were considered here.

¹Under the Defense FAR Supplement § 246.103(c), complexity and criticality determine quality requirements.

The contracting officer here found Teledyne equally capable of producing a quality product, and, considering the relative work loads of the two offerors, as likely if not more likely to meet the required delivery schedule. The record contained no evidence that this determination was unreasonable, and Hi-Shear presents no such evidence in its request for reconsideration. The factors considered in the selection decision were clearly consistent with both versions of the regulation.

In essence, Hi-Shear continues the argument made in its earlier protest that a contractor's acceptance into the BRC Program removes a contracting officer's discretion to consider price and, under a solicitation that provides for consideration of BRC status, requires selection of the BRC contractor regardless of other considerations. In our prior decision, we recognized that the ordinary expectation is that award to a BRC will be in the government's best interest, even where the price is higher. However, under either version of the regulation, the contracting officer may make award to the non-BRC and must, in fact, justify any decision to make award to a BRC at a higher price. The regulation promises only consideration of BRC status and clearly allows the contracting officer the discretion to weigh that status against a higher price, considering various relevant factors, in making a selection decision. Hi-Shear's continued disagreement with our earlier decision provides no basis for reconsideration. See 4 C.F.R. § 21.12(a) (1995); Jack Faucett Assocs.-Recon., B-254421.3, Aug. 11, 1994, 94-2 CPD ¶ 72.

The request for reconsideration is denied.

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