



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Exide Electronics Corporation; Department of the
Air Force-Reconsideration

File: B-261711.7; B-261711.8

Date: March 27, 1996

Marc F. Efron, Esq., John E. McCarthy, Jr., Esq., and Lisa A. Price, Esq., Crowell & Moring, for Exide Electronics Corporation, a requester.

Brian J. Donovan, Esq., Jones & Donovan, for Liebert Federal Systems, Inc. and Richard F. Smith, Esq., John S. Pachter, Esq., and Jonathan D. Shaffer, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for L.K. Comstock, Inc., the interested parties. Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Requests for reconsideration of decision sustaining protests of agency's cost evaluations are denied where the requests provide no basis for reconsidering the decision.

DECISION

Exide Electronics Corporation and the Department of the Air Force request reconsideration of our decision sustaining the protests of L.K. Comstock, Inc. and Liebert Federal Systems, Inc. against the award of a contract to Exide under request for proposals (RFP) No. F04606-94-R-0002, issued by the Air Force for static uninterrupted power supplies (SUPS) and associated equipment and services.

We deny the requests for reconsideration.

We sustained the protests due to the agency's unreasonable cost evaluations; specifically, we found that the agency's application of unsupported, unrealistic quantity estimates to the various discounts offered by Exide in its proposal was improper and that the record therefore did not reasonably support the agency's determination that the Exide proposal offered the lowest cost to the government. L.K. Comstock, Inc.; Liebert Fed. Sys., Inc., B-261711.5; B-261711.6, Dec. 14, 1995, 96-1 CPD ¶ 4.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1995); see Richards Painting Co.--Recon., B-232678.2, May 19, 1989, 89-1 CPD ¶ 481. The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Exide essentially repeats arguments made previously regarding the timeliness of the challenges to the RFP's quantity estimates and evaluation provisions, and expresses disagreement with our consideration of the issues. Exide contends that early in the procurement the protesters knew, or should have known, their bases for protest of the estimates, and the evaluation provisions' use of those estimates, since the estimates were questioned prior to the closing date for receipt of proposals. We believe, however, that since the agency generally confirmed the RFP's estimates in the pre-closing question and answer period, there was no reason for the protesters to challenge the accuracy of the estimates until information first learned after award revealed questions about the propriety of the evaluation of Exide's discounted proposal, which was based upon those estimates. The reasonable accuracy of the estimates then became an appropriate, relevant, and timely matter for our review. As we pointed out in our decision, a post-award challenge to an agency's stated estimates is timely and may serve as a valid basis for overturning an award where the estimates misrepresented the government's needs such that the inaccurate estimates reasonably skewed the determination of which offer would result in the lowest cost to the government in terms of actual performance. See Comstock Communications, Inc., B-242474, May 6, 1991, 91-1 CPD ¶ 438. Further, as the decision states, since Exide's offered discounts are based on the challenged estimates, and the Exide discounts could only be evaluated for award if the condition on which the discounts are based likely will be met, the protests of the estimates, which played an integral role in the evaluation of proposals, were appropriate and timely for our review. See 48 Comp. Gen. 256 (1968).

Exide contends that two portions of the decision regarding the evaluation of its ancillary equipment discounts contain errors of fact that support the firm's request for reconsideration. Exide states that its [deleted] under the contract and not just [deleted] required by scenario 2, as represented in our decision. Our decision, which reviewed the agency's evaluation of the proposed [deleted], that is, the most probable cost analysis, as protested, reflects the agency's characterization and evaluation of [deleted]. Although Exide's proposal includes a general [deleted] on all [deleted], Exide did not challenge the most probable cost analysis for Exide as too high despite the fact that the agency characterized [deleted] as applying to [deleted]. In fact, in its numerous submissions to our Office during the protests, Exide itself repeatedly referred to [deleted] for [deleted] in describing its [deleted]

effect on its proposed price, and also pointed out that the [deleted], suggesting that the characterization of [deleted] in terms of the price for the [deleted] was reasonable. Further, given the lack of any reasonable accuracy of the quantity estimates used for the evaluation of the [deleted], Exide has not shown, nor does the record suggest, that the outcome of our decision is affected in any material respect by our characterization of [deleted]. The price reduction claimed by Exide in regard to this [deleted] is de minimus in light of the overall flaws in the agency's evaluation of its proposal, which flaws resulted in a substantial, unsupported difference in cost among the proposals, and does not show that our decision that Exide was unreasonably determined to be the low-price offeror was incorrect.

The RFP included two sample tasks ("scenarios") for which offerors were to provide technical and cost proposals for evaluation. To determine each offeror's evaluated price for contract line item number 25, regarding ancillary equipment, each offeror's cost proposals for the sample tasks were to be averaged, then multiplied by the firm's proposed weighted average conversion factor, and the resulting amount was to be multiplied by the RFP's estimated quantity of 935 installation sites requiring ancillary equipment. Exide proposed a \$50,000 discount on all delivery orders for \$400,000 or more of ancillary equipment. Exide now contends that our Office should have found that this discount should have been evaluated as applying to 468 sites rather than the 935 sites mentioned in the decision. Exide generally contends that, at 468 sites, the discount would more likely be achieved than under our Office's analysis (which found unreasonable the evaluations' application of the RFP's multiplier of 935 sites to the proposed discount since the record showed that nowhere near 935 sites reasonably would require \$400,000 or more in ancillary equipment to trigger the discount as evaluated by the agency). As provided for in the RFP, however, the agency took the averaged cost of scenarios 1 and 2, and, after conversion factor application, multiplied it by 935 sites, not 468 sites, to determine the ancillary equipment price. Moreover, Exide fails to show that the evaluation approach for which it argues would have made any meaningful difference to our decision. Further, the record does not even suggest, as Exide contends, that 468 sites would reasonably require the \$400,000 or more in ancillary equipment necessary to trigger this \$50,000 discount. Exide, in its request for reconsideration, in fact agrees that the alleged reduction to its proposed price due to this discount is approximately that calculated by the agency in its most probable cost analysis and stated in our prior decision. The request for reconsideration does not provide any reasonable basis to support a change in our opinion that Exide's proposal was not reasonably evaluated as offering the lowest cost to the government.

The Air Force requests that we modify our corrective action recommendation that the agency review the RFP quantity estimates and evaluation provisions and amend the RFP as appropriate; request and evaluate new cost proposals; and then terminate Exide's contract and award to one of the two protesters if either is in line

for award. The Air Force asks that we instead recommend termination of the Exide contract and award to Liebert.

We do not view the requested recommendation as appropriate in light of the improprieties cited in the cost evaluations stemming from the inadequate estimates upon which offerors based their cost proposals. The Air Force, in effect, states its willingness to reject Exide's discounted offer due to our determination that the quantity estimates upon which it was evaluated were defective and were not a reasonable or reliable basis for evaluation of the agency's expected costs under the contract. However, the Air Force requests that we recommend award of a contract to Liebert under the RFP based upon the same flawed estimates. We believe the defective estimates permeated every aspect of the preparation and evaluation of the cost proposals--the accuracy of which the agency should have questioned during the procurement but did not--and cannot reasonably be the basis of an award determination. It is simply not reasonably possible on this record to determine with any certainty that Liebert, as the agency contends, is in line for award.

The Air Force also repeats arguments it previously made to our Office requesting that the protest of the cost evaluation of Exide's discount proposal filed by Comstock, which included allegations contesting the estimates used by the agency, be dismissed on the basis that the firm is not an interested party to challenge the award determination. The Air Force contends that Comstock would not be line for award even if the award determination was improper since Comstock's cost proposal is higher than Liebert's and, thus, the firm does not have sufficient direct economic interest to file the protest. We disagree. Due to the serious, numerous, and fundamental improprieties in the estimates and evaluations here, the record does not show with any reasonable certainty which offeror would be next in line for award.

The requests for reconsideration are denied.

Comptroller General
of the United States