

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60344

FILE: B-183816

DATE: December 31, 1975

MATTER OF: Republic Electronic Industries Corporation

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DIGEST:

Protester which did not make substantive comments on contracting agency's reports and withdrew its protest is not entitled to request reconsideration of GAO decision rendered on separate protest involving same procurement. All parties involved in protest are entitled to rely on protest decision as final resolution of matter, absent timely request for reconsideration submitted by protester which pursued its protest to conclusion, interested party which actively participated in protest proceedings, or agency involved in protest.

Republic Electronic Industries Corporation (Republic) requests reconsideration of our decision in the matter of EPSCO, Incorporated, B-183816, November 21, 1975. The essential issue presented is whether Republic can properly obtain reconsideration of the decision. For the reasons which follow, we conclude that Republic cannot, and therefore close our file in this matter.

The decision denied EPSCO's protest, which was basically premised on the allegation that award of a contract to PRD Electronics, Inc. (PRD), by the Department of the Air Force was a "buy-in." The decision concluded that the source selection of PRD was of doubtful propriety, but also that EPSCO was not prejudiced by the selection. We stated that other offerors, whose proposals were rated "Excellent/Very Good" in the technical evaluation, were the parties which might have suffered any material prejudice by reason of the doubtful source selection decision.

Republic was one of the other offerors which might have been prejudiced. Also, Republic had filed a protest with our Office, alleging essentially that the Air Force improperly failed to apply life cycle costing techniques in the evaluation of the proposals. The Air Force furnished two reports in response to Republic's protest. Republic did not submit substantive comments on either report to our Office. On September 24, 1975, Republic, on its own initiative, contacted our Office and withdrew its protest.

Republic's December 1, 1975, letter to our Office seeks reconsideration of the decision and a reinstatement of its protest. Republic contends that our Office should direct the Air Force to set aside the award to PRD and make an award to Republic, or conduct a resolicitation.

Republic's protest was filed under our Interim Bid Protest Procedures and Standards, 4 C.F.R. § 20 (1974). These procedures are silent on the question of the circumstances under which reconsideration of a protest decision may be obtained. However, we note that our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), effective June 2, 1975, provide as follows in section 20.9:

"(a) Reconsideration of a decision of the Comptroller General may be requested by the protester, any interested party who submitted comments during consideration of the protest, and any agency involved in the protest. * * *"

While these procedures are not applicable to Republic's case, we believe that they do provide some guidance on the question of when a request for reconsideration should be entertained. We believe that under our current Bid Protest Procedures, Republic's request would not be for consideration. Since Republic withdrew its protest, it would not reasonably qualify as a "protester" within the meaning of section 20.9; it was not an interested party which submitted "comments"; and it was not an agency.

Also, we believe this result is consistent with the principles underlying our Interim Bid Protest Procedures and Standards. We have indicated that among the purposes of these procedures is to attempt to insure basic fairness to all parties in terms of providing an opportunity to present their cases and in terms of obtaining a reasonably speedy decision resolving the matter. See, generally, Cessna Aircraft Company et al., 54 Comp. Gen. 97 (1974), 74-2 CPD 91; Leasco Information Products, Inc., et al., 53 Comp. Gen. 932 (1974), 74-1 CPD 314; and 52 Comp. Gen. 20 (1972). In Cessna, for example, we rejected the protester's contention that the seriousness of the issues raised justified disregarding our timeliness standards as mere "technicalities." We noted that to follow this course of action would be unfair to the rights and interests of the contracting agency and the prospective contractor. 54 Comp. Gen., supra, at 111.

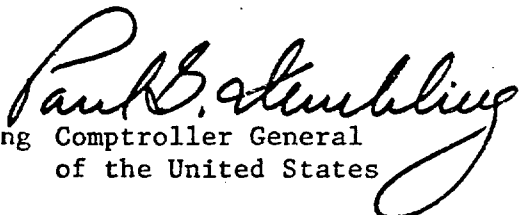
Consistent with the principles discussed in these and other decisions, we believe that the parties involved in a protest are

entitled to expect that our protest decision on the merits represents the final resolution of the matter, absent a timely request for reconsideration submitted by a protester which has pursued its complaint to its conclusion, an interested party which has actively participated in the protest proceedings, or an agency involved in the protest. In this light, we believe that to allow Republic to reopen the issues at this time clearly raises the possibility of unfair treatment and prejudice to one or more of the other parties.

We note that Republic has stated that it withdrew its protest believing that this Office would address itself to the issues raised by EPSCO, including the question as to the wording of the RFP evaluation criteria, "* * * in a manner transcending all bidders." We note, however, that EPSCO's protest did not raise any questions concerning the evaluation criteria. This issue was raised by our Office after reviewing the record. Also, we believe that a protester should not be encouraged to rely on the expectation that another protester or interested party will effectively represent its interests. We note that EPSCO could have decided to withdraw its protest also.

Lastly, we gather that Republic's request may be premised on its belief that our decision found the award to PRD to be improper per se, and that the only reason for declining to recommend corrective action, such as a termination for convenience, was that EPSCO was not prejudiced. As a matter of information, we note that this is inaccurate. Our decision found only that the selection of PRD was doubtful, based on the facts of record. Possible corrective actions in such circumstances, if warranted by the facts of the case, would involve a recommendation that the Secretary of the Air Force ascertain whether rational support for the selection existed which did not appear in the record (see, for example, Tracor Jitco, Inc., 54 Comp. Gen. 897 (1975), 75-1 CPD 253), or, a recommendation that the selection be reconsidered.

In view of the foregoing, we are closing our file in this matter.


Acting Comptroller General
of the United States