Order
Pl 1

DECISION

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

~~28723~~ 28721

FILE: B-212395.7 **DATE:** July 3, 1984

MATTER OF: Swintec Corporation--Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where the protester has not shown any error of law or fact which would warrant reversal of the decision.

Swintec Corporation (Swintec) requests reconsideration of our decision in Swintec Corporation, Canon U.S.A., Inc., Olympia USA, Inc., Guernsey Office Products, B-212395.2, B-212395.3, B-212395.4, B-212395.5, Apr. 24, 1984, 84-1 C.P.D. ¶ 466. In that decision, we sustained Swintec's protest that the General Services Administration (GSA) improperly rejected Swintec's offer of its model 1146 CM electronic memory typewriter under a multiple-award schedule (MAS) solicitation No. YGE-B8-75246, for electronic typewriters capable of automatic typing and temporary storage. We dismissed Swintec's protest against the single-award invitation for bids (IFB) No. FGE-C4-75249-A for a governmentwide requirements contract for single element, electric electronic and typebar typewriters. We determined that Swintec was not an interested party under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983).

Swintec challenged the allegedly improper notice given for life cycle cost (LCC) testing and also protested the LCC testing methodology incorporated into the IFB. However, the Swintec model offered had a 14-inch carriage and the IFB required typewriters with a maximum paper width of 15-18 inches. Thus, Swintec's model did not meet the minimum carriage requirements and was ineligible for award regardless of LCC considerations. Accordingly, since, even if the issue of the LCC procedures were resolved in Swintec's favor, Swintec remained ineligible for award, we concluded that Swintec was not an interested party to protest the LCC procedures. Finally, we dismissed as untimely Swintec's protest against the 15-inch carriage capacity requirement contained in the IFB. The 15-inch carriage capacity requirement was contained in the IFB, but Swintec did not protest this alleged impropriety in the solicitation until a month after bid opening.

029361

Swintec requests that we clarify our letter to GSA concerning remedial action to be taken on the basis of our sustaining Swintec's protest against the MAS solicitation and direct that GSA award a contract to Swintec. Swintec also argues that it timely filed its protest against the 15-inch carriage requirement. Thus, according to Swintec, this issue should be considered on the merits and, consequently, Swintec is an interested party to challenge the single-award IFB. Swintec also argues that the issues raised concerning the single-award IFB are significant to procurement practices or procedures, generally, and should be considered in any event.

We deny Swintec's request for reconsideration.

In our decision, we found that GSA improperly rejected Swintec's bid under the MAS solicitation on the basis of a requirement for feature text or page format memory not stated in the solicitation. We stated that, with regard to a remedy, GSA should determine whether or not the existing item description which did not include a feature text or page format memory reflected its minimum needs. The record suggested that GSA needed these features although they were not contained in the item description. We stated that if GSA concluded that government user needs justified the memory feature, as GSA appeared to suggest, GSA should determine whether all MAS contractors met this requirement and no further action was necessary since Swintec's model did not contain this feature. If GSA decided it did not need this feature, we recommended an award be made to Swintec. Finally, we advised that future MAS procurements should reflect GSA's needs.

GSA has advised us that it has determined that the item description and Swintec's typewriter do not reflect the government's needs for page and text format memory. GSA further states that, in any event, it is impractical to reopen negotiations because the MAS contract expires on September 30, 1984. Finally, GSA has prepared a revised item description requiring text or page format memory for future solicitations.

In view of GSA's remedial actions, we find there is no need to clarify our recommendation. We sustained the protest that GSA acted improperly in evaluating Swintec's offer under the MAS. GSA reports that the memory feature reflects

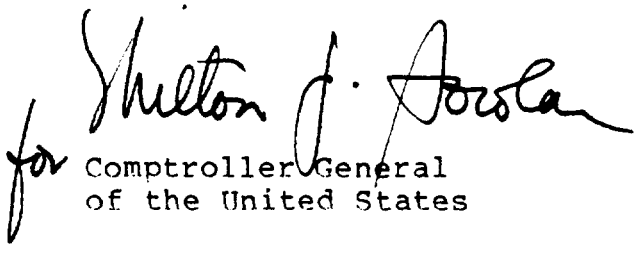
its minimum needs and there is no basis to dispute it on this record. Since Swintec's product does not meet GSA's needs, further remedial action is not justified. Our decision certainly does not condone GSA's failure to properly state its requirements in the solicitation, but, once the agency needs are fully stated and the Swintec product does not meet it, we cannot direct that the agency accept a product which does not fulfill its requirements. In addition, GSA has corrected the problem for future procurements by revising the item description.

With regard to the timeliness of Swintec's protest of the 15-inch carriage specification, the requirement was contained in the IFB. Thus, GSA's failure to state the 15-inch requirement in the Commerce Business Daily notice or failure to bring it to Swintec's attention in correspondence with Swintec before and after the issuance of the IFB does not appear to have prejudiced Swintec regarding notice of the requirement nor does it relieve Swintec of its duty under our bid protest procedures to object to this alleged impropriety in the solicitation before bid opening. 4 C.F.R. § 21.

Since Swintec's typewriter was ineligible under the IFB because of the IFB carriage requirement, in our view, our holding that Swintec was not an interested party to challenge other aspects of the IFB is correct.

Finally, we note that under our bid protest procedures, the significant issue exception is applicable to untimely protests, not our interested party rules. Thus, we will not consider on the merits the LCC and issues raised by Swintec because, even if its allegations were sustained on these issues, it would not be eligible for award.

Since Swintec has not shown any error of law or fact which would warrant reversal of our prior decision, we affirm our decision.



for Comptroller General
of the United States