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Washington, DC 20548

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Decision

Matter of: Social Security Administration; MCI WorldCom Communications, Inc.--Reconsideration

File: B-286201.4; B-286201.5

Date: April 19, 2001

DECISION

The Social Security Administration (SSA) and MCI WorldCom Communications, Inc. request reconsideration of our decision in Rockwell Elec. Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ __, sustaining Rockwell's protest of an award to MCI under request for proposals (RFP) No. SSA-RFP-00-3929, issued by SSA for network-based services to replace the agency's call answering system. Our decision found that the agency failed to follow the price evaluation plan stated in the RFP, and that Rockwell was prejudiced by the agency's actions. The requesters contend that we erred in finding prejudice.

We deny the requests for reconsideration.

In order to obtain reversal or modification of a decision, the requesting party must show that our prior decision contains either errors of fact or law, or present information not previously considered that warrants such action. 4 C.F.R. § 21.14(a) (2000). Repetition of arguments made during consideration of the original protest or mere disagreement with our decision does not meet this standard. RGII Techs., Inc.--Recon. and Protest, B-278352.2, B-278352.3, Apr. 14, 1998, 98-1 CPD ¶ 130 at 3.

SSA has approximately 12,000 call center representatives working at 38 call centers nationwide servicing incoming toll-free calls. SSA receives incoming toll-free calls from the public under the General Services Administration's (GSA) FTS 2001 contract with MCI (selected by SSA from GSA's available contractors). In pertinent part, the RFP requested proposals that would provide the best solution for distributing within SSA both incoming calls received from the FTS 2001 contractor, and administrative calls, which are initiated by SSA's staff.

Offerors could propose from a variety of call distribution system designs. The potential continuum of call distribution systems ranged from substantial reliance on

the FTS 2001 contractor by feeding calls back into the FTS 2001 system for distribution within SSA, to total reliance on a distribution network independent from the FTS 2001 system and dedicated to handling SSA's calls, e.g., a virtual private network (VPN). Use of the FTS 2001 system would require SSA to pay the costs of such call distribution services directly to the FTS 2001 contractor under the terms of that contract; thus, not all of the costs of call distribution are included in the network-based services contract's fixed price. In the case of VPNs, once an incoming call is received from the FTS 2001 contractor, no FTS 2001 costs are incurred for call distribution; thus, all of the costs of call distribution are included in the network-based services contract's fixed price.

The RFP provided for evaluating FTS 2001 costs in the price evaluation. To facilitate this evaluation, the RFP required offerors to identify in their price proposals the specific FTS 2001 costs that their proposed call distribution systems would incur. Evaluated price was the most important evaluation factor.

Two of four offerors submitted proposals based on VPNs. Rockwell was one of the offerors proposing a VPN; MCI was not. MCI's proposed solution relied in part on the FTS 2001 system to distribute calls. However, MCI's price proposal did not identify specific FTS 2001 resources and/or associated FTS 2001 costs for call distribution. The evaluated price of MCI's proposal was approximately \$[DELETED] lower than Rockwell's. Since the two proposals received the same ratings on the remaining best value evaluation factors, MCI's proposal was selected for award.

The agency conceded during the protest process that where a proposal, such as MCI's, did not identify the specific FTS 2001 costs to be incurred, SSA could not know what FTS 2001 costs SSA would incur under that proposal. Rockwell Elec. Commerce Corp., supra, at 7. Consistent with this concession, we determined that the FTS 2001 costs applicable to MCI's proposal could not be definitively determined from the record. Id. at 9. Thus, SSA's price evaluation did not consider all of the FTS 2001 costs applicable to MCI's proposed solution, such that the price evaluation and source selection were not consistent with the terms of the RFP.

As discussed in our prior decision, the agency initially did not contemplate the need to evaluate FTS 2001 costs for administrative call traffic. SSA stated that it had anticipated all proposals would select the same FTS 2001 services to address this requirement, and thus the associated costs would be the same for all offerors and would have no impact on the price evaluation. Our decision recognized that although this may have been the agency's unstated assumption when the RFP was issued, offerors were never made aware of this assumption, and their proposals did not employ the same FTS 2001 services for distributing administrative calls. These circumstances required the agency to modify its assumption and evaluate the disparate FTS 2001 costs in order to have a proper price evaluation. The agency did not do so. Rockwell Elec. Commerce Corp., supra, at 7-8.

It was in the context of station-to-station calls (a specific type of administrative call traffic) that the issue of prejudice was argued by the parties and addressed by our decision. Late in the protest process (at the hearing), SSA, for the first time, alleged that this error did not prejudice Rockwell because the level of administrative calls and associated FTS 2001 costs were insignificant. Id. After the hearing, SSA asked a sample of call center managers to estimate the volume of station-to-station calls. From the responses, SSA estimated that the total volume of station-to-station call traffic and any associated FTS 2001 costs were insignificant. Id. at 8 n.6.

As indicated in our prior decision, nothing in the record available to competitors suggested that administrative or station-to-station calls were insignificant; to the contrary, the RFP explicitly stated the agency's desire for the industry's best solution for distributing administrative calls and provided detailed specifications for providing such call capability. Id. at 9. The RFP encouraged alternative administrative call delivery solutions; the RFP and SSA's communication with offerors in no way stated or implied the agency's expectation that administrative calls would be delivered, as was previously done, using the FTS 2001 system. As a result, half of the offerors proposed administrative call delivery solutions other than the FTS 2001 system. Only these offerors had the entire cost of their proposed administrative call delivery systems included under SSA's price evaluation. These offerors did not know that the agency considers the level of administrative calls and associated FTS 2001 costs to be insignificant¹ or that these FTS 2001 costs would not be included in the price evaluation.

Under the circumstances, the RFP was misleading. In this regard, we found that offerors might have proposed significantly different solutions had they known that the agency would evaluate the costs of alternative solutions and not the FTS 2001 costs of FTS 2001-based solutions, or that the agency considered such FTS 2001 costs insignificant. Rockwell Elec. Commerce Corp., supra, at 9. Rockwell's protest stated that this would have been the case for its proposal, and that the evaluated price of its resulting proposal would have been approximately \$[DELETED] lower had it known of these facts.

In sum, once the agency alleged late in the protest that the level of administrative call traffic was not significant, there were two possible outcomes associated with the agency's failure to evaluate FTS 2001 costs. The first was that, if the level of call traffic is significant, the agency cannot determine the evaluated price for MCI's proposal. The second outcome was that, if the level of such call traffic is insignificant, and thus evaluation of the associated costs is not material, the RFP was misleading and the offerors that proposed VPN's, such as Rockwell, did not have a fair opportunity to propose a competitive proposal in response to the RFP.

¹ There is no contemporaneous evidence that SSA believed administrative call traffic was insignificant when it evaluated the proposals.

Although the standard for determining whether prejudice exists is the same under either outcome,² the nature of prejudice differs between the two outcomes. Under the first outcome, given a significant level of administrative call traffic, Rockwell was prejudiced by the agency's failure to evaluate the associated FTS 2001 costs for MCI's proposal if the value of MCI's unevaluated FTS 2001 costs will be equal to or greater than the previously evaluated \$[DELETED] price advantage of MCI. Under the second outcome, given an insignificant level of administrative call traffic, the value of MCI's FTS 2001 costs may not be material, but Rockwell was nonetheless prejudiced by the misleading RFP if it otherwise could have submitted a proposal that would have had a substantial chance of receiving award. Our decision addressed both types of prejudice. Rockwell Elec. Commerce Corp., *supra*, at 9.

On reconsideration, MCI contends that our decision improperly shifted the burden of proving prejudice from the protester by not requiring Rockwell to prove that the value of MCI's unevaluated costs are significant enough to offset MCI's price advantage. MCI alleges, as it did during the protest, that the value of these costs for its proposal are not sufficient to offset MCI's previously evaluated price advantage.

We disagree. As stated, MCI's unevaluated FTS 2001 costs could not be determined from MCI's proposal. Nevertheless, using the statements made by MCI during the protest alleging the intended but unstated terms of MCI's proposal, Rockwell contended that the unevaluated costs under MCI's proposal could be as much as \$25 million given a significant level of administrative call traffic, in which case Rockwell's proposal would have displaced MCI's proposal as the low-priced offer.³ Rockwell Elec. Commerce Corp., *supra*, at 8. Given MCI's deficient proposal, the record did not permit determining the actual FTS 2001 costs for MCI's proposal. We think Rockwell adequately addressed this aspect of prejudice.

MCI also alleges that, in considering the prejudicial value of MCI's unevaluated FTS 2001 costs, our decision failed to consider the agency's post-hearing estimate of station-to-station call volume and the associated FTS 2001 costs for MCI's proposals. Our decision did identify this estimate. Rockwell Elec. Commerce Corp., *supra*, at 8 n.6. We did not find that this information necessitated a finding of no prejudice

² Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

³ While MCI asserts that we should give no weight to Rockwell's assertions because its counsel did not cross-examine MCI's consultant when this issue was raised for the first time at the hearing, this does not discredit Rockwell's assertions.

because, in addition to being first introduced after the hearing and not being considered by SSA in the evaluation or source selection, it does not take into account the probable impact of a fair and properly conducted competition had the offerors been aware that SSA expected this call traffic to be insignificant. Id. at 9. To the extent the level of administrative call traffic, and thus MCI's associated FTS 2001 costs, may be insignificant, prejudice must be gauged based on what offerors might have proposed but for the misleading solicitation. Accordingly, MCI's allegations at best express mere disagreement with our decision; they do not establish error.

SSA and MCI allege that our decision erred in determining that, but for the agency's failure to advise offerors that FTS 2001 costs for administrative call traffic would not be evaluated or was insignificant, Rockwell might have submitted a proposal with a price \$[DELETED] less than the one it did submit. Their reconsideration requests allege that Rockwell cannot modify its proposal to eliminate its VPN for administrative calls and take advantage of the unevaluated or insignificant FTS 2001 costs in a manner that would offset the \$[DELETED] price advantage of MCI's proposal. In this regard, SSA asserts that the record establishes that the cost of Rockwell's entire VPN is approximately \$[DELETED]. The entire VPN provides for distribution of both incoming and administrative calls, and cannot be eliminated in its entirety from Rockwell's proposal without rendering the proposal unacceptable. SSA alleges that the cost of the portion of Rockwell's VPN that handles administrative calls only is \$[DELETED], elimination of which would not overcome the significant price advantage of MCI's proposal. SSA thus contends that Rockwell was not prejudiced by the agency's actions because Rockwell would have no chance of receiving award, even if its proposal were so modified.

Our decision did not err in identifying \$[DELETED] as the approximate potential value of Rockwell's price reduction under a fair and proper competition. We stated Rockwell's allegation of prejudice as Rockwell had presented it during the protest—that Rockwell's solution to provide administrative call capability via its VPN, which permitted station-to-station calls, had an incremental cost of approximately \$[DELETED] that could be eliminated if FTS 2001 services (as employed by MCI's proposal and not included in MCI's evaluated price) were used instead. Rockwell Elec. Commerce Corp., supra, at 8-9; see, e.g., Rockwell's Comments on the Hearing at 3.

The record supports Rockwell's claim that its incremental cost of the administrative call portion of its VPN was approximately \$[DELETED], and thus it would have revised its proposal to eliminate this incremental cost had it know that either SSA would not evaluate the alternative FTS 2001 costs for administrative call traffic or that those costs were insignificant. As Rockwell identifies in response to the requests for reconsideration, the record shows that the \$[DELETED] figure is based on only a fraction of the VPN connections proposed by Rockwell's total solution and related costs (e.g., eliminating [DELETED] comprising Rockwell's entire VPN) at an

evaluated price of approximately \$[DELETED], as well as [DELETED]. Rockwell's Response to SSA's Request for Reconsideration at 5-6; Rockwell's Response to MCI's Request for Reconsideration at 7. Given this price reduction, there is a substantial chance that SSA would have selected Rockwell's proposal for award over what essentially would then be the equally priced and equally rated proposal of MCI. Thus, in the context of a misleading RFP, Rockwell was prejudiced by not having had the opportunity to compete knowing that FTS 2001 costs for administrative call capability were insignificant or would not be evaluated.

Moreover, even if the requesters did not understand during the protest that the protester was alleging that the \$[DELETED] figure was related only to Rockwell's proposed solution for administrative call capability, there was no doubt in the record that Rockwell was asserting this figure as the measure of prejudice arising from the misleading RFP. Therefore, the requesters could have asserted during the protest process that a lesser amount should be used as the value of Rockwell's potential price reduction. Neither did so. Thus, this belated argument is not a proper basis for modifying the decision on the protest. Cosmodyne, Inc.--Recon., B-260650.3, Mar. 18, 1996, 96-1 CPD ¶ 201 at 2-3.

In summary, to prevail on a request for reconsideration, the requesting party or parties must show that our prior decision contains factual or legal errors or failed to consider information that warrants reversal or modification of our decision. 4 C.F.R. § 21.14 (2000). Upon consideration of the arguments presented in the reconsideration requests, we find that SSA and MCI have failed to make the requisite showing.

We modify our prior recommendation to allow Rockwell to be reimbursed for its costs of responding to SSA's and MCI's requests for reconsideration as part of its costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1). Rockwell's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The requests for reconsideration are denied.

Anthony H. Gamboa
General Counsel