DECISION

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

FILE: B-218317.2 **DATE:** July 15, 1985

MATTER OF: Feinstein Construction, Inc.--Request for Reconsideration

DIGEST:

Original decision is affirmed where party requesting reconsideration does not demonstrate that it was legally or factually incorrect.

Feinstein Construction, Inc. (FCI) requests reconsideration of our decision Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 C.P.D. ¶ ___, in which we upheld the Air Force's determination to cancel invitation for bids (IFB) No. F04626-85-B-0008 after bid opening. We affirm the decision.

The IFB was issued for bids to renovate the N.C.O. Mess Hall at Travis Air Force Base. Following bid opening, the Air Force determined that the specifications were ambiguous and inadequate, and did not include certain required work. The Air Force therefore canceled the IFB pursuant to Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.401(e)(1) (1984), which permits cancellation after bid opening of a solicitation that contains inadequate or vague specifications. FCI protested to this Office that the cancellation was improper.

We denied FCI's protest. In doing so, we stated the rule that a procuring activity must have a compelling reason to cancel an IFB after bid opening, because of the potential adverse impact on the competitive bidding system of canceling after prices have been exposed. We further noted that a compelling reason exists where, after bid opening, the agency learns that its needs exceed those stated in the IFB. We concluded that the Air Force acted reasonably in determining that all needed work at the Mess Hall should be performed under one contract, and that there was no requirement, as FCI contended, that an agency award a contract under a defective solicitation and issue a new solicitation for the additional work.

Under our Bid Protest Regulations, we will reconsider a decision where the party requesting us to do so demonstrates that our initial decision was based on an erroneous conclusion of law or failed to consider relevant facts. 4 C.F.R. § 21.12(a) (1985).

FCI first complains that, in our initial decision, we simply accepted the Air Force's unsupported allegations that the specifications were deficient and ambiguous, without considering their materiality or whether they actually existed. FCI is correct in stating that we did not question whether the alleged deficiencies were, in fact, present. However, this is not because we accepted the Air Force's unsupported statements. Rather, we found it unnecessary to address the matter because we found that the omitted requirements alone justified the decision to cancel the IFB. Thus, the fact that we did not discuss whether the alleged discrepancies actually existed does not provide a basis for modifying our initial decision.

FCI next asserts that our initial decision is legally incorrect in that we found the requirements omitted from the solicitation provided the agency with a compelling reason to cancel the solicitation. FCI argues that omitted requirements justify the cancellation of a solicitation after bid opening only where they are integrally related to the requirements stated in the IFB as issued and their inclusion would significantly increase the cost of performance. FCI asserts that W.M. Grace, Inc., B-202842, Aug. 11, 1981, 81-2 C.P.D. ¶ 121, and Garrison Construction Co., B-211359.2, Oct. 31, 1983, 83-2 C.P.D. ¶ 515, the cases we cited in our initial decision to support our conclusion that the omitted requirements justified the cancellation, actually support its position. FCI argues that the omitted construction work was not an integral part of the work originally specified and would not add significantly to the cost of performing that work and, consequently, that these omitted requirements could not legally be used to justify canceling the IFB.

Contrary to FCI's analysis, in neither cited case did we find that cancellation of the solicitation was justified on the ground that requirements omitted by the agency were integrally related to the initially stated requirements. In fact, we did not address this issue in either case. Further, while in both cases we considered the cost of the

additional work in relation to the cost of performing the initial work, in neither decision was our conclusion based on the increased cost. Rather, in both cases we decided that the agency was justified in canceling the IFB after bid opening because the added requirements changed the scope of the contract work significantly.

We applied the same standard in our initial decision. As we pointed out, the specifications in the issued IFB failed to require the contractor to replace the flooring in the main bar area; remodel a restroom; replace a bar and soundsystem; and relocate conduits and ducts. The drawings accompanying the IFB also failed to reference the relocation, expansion or replacement of existing telephone and public address systems. We concluded that these requirements, when added to what was called for by the IFB, significantly changed the scope of the needed contract work.

As to whether the estimated cost of these omitted items in fact substantiated their significance, FCI's base bid for the work specified in the initial IFB was $899,615. During the development of FCI's initial protest, the Air Force estimated that the cost of the added requirements would be $200,000. FCI alleges that we should not accept the government's unsupported estimate and that it would cost only $15,000 to perform the added work. Notably, however, during its initial protest, FCI accepted the government's estimate and argued that the new requirements were significant and should be procured under a new solicitation. In any event, it is the protester's burden to prove its case, see S.A.F.E. Export Corp., B-205121, Mar. 23, 1982, 82-1 C.P.D. ¶ 276, and FCI has presented no evidence to show that the Air Force's cost estimate is unreasonable. Thus, we have no legal basis to question the Air Force's estimate for the additional work, and while we found it unnecessary to address the matter in connection with our initial decision, we believe it does substantiate the Air Force's decision to cancel the IFB.

Finally, FCI is concerned that our initial decision would permit an agency to cancel an IFB after bid opening with only a reasonable basis instead of the more stringent compelling reason that is traditionally required. FCI asserts that our decision will permit an agency to cancel an IFB any time it discovers, after bid opening, that it has

additional requirements and decides it would be convenient to have all work performed by one contractor. FCI bases this view on the following statement in our initial decision:

> "When an agency issues a solicitation for construction work and after bid opening learns that its needs exceed those stated in the IFB, we do not believe it is unreasonable for the agency to determine that all required work at the particular site should be performed under one contract."

Contrary to FCI's position, our decision neither changes the standard an agency must meet to cancel an IFB after bid opening nor permits an agency to cancel an IFB after opening merely because it would be convenient for one contractor to perform all the required work. We simply found that the Air Force's decision that there was a compelling reason to cancel the IFB was reasonable, and not that the agency needed a less-than-compelling reason. Further, we clearly did not, in reaching this conclusion, establish a blanket rule for cancellations. We held only that it was reasonable for the Air Force to determine, in the context of the Travis Air Force Base situation, that one contractor should perform all required construction work in the same building and at the same time.

Our prior decision is affirmed.

Harry R. Van Cleve
General Counsel