

DECISION

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

FILE: B-219305.3 **DATE:** October 11, 1985
MATTER OF: VCA Corporation--Reconsideration

DIGEST:

Prior decision is affirmed where the request for reconsideration fails to indicate that errors of fact or law exist in the prior decision to warrant its reversal or modification. In addition, several contentions raised in the reconsideration request essentially concern matters of contract administration which GAO will not consider under its bid protest function.

VCA Corporation (VCA) requests that we reconsider our decision in VCA Corporation, B-219305.2, Sept. 19, 1985, 85-2 C.P.D. ¶ _____. We affirm our prior decision.

In that decision, we dismissed VCA's protest against the Army's decision to obtain microcomputer systems from the second low offeror under request for proposals (RFP) No. MDA-903-85-R-0065, in order to satisfy the requirements remaining under VCA's defaulted contract for the systems, essentially because the agency had an urgent need for the equipment, which would not permit a new competition. See Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703 (1978), 78-2 C.P.D. ¶ 117.

We pointed out that we have held that the ordering of requirements for a reprocurement from the second low bidder on the original solicitation is an acceptable method of reprocurement, and where, as in this case, there was a relatively short time span between the original competition and the default, the bids received under the original solicitation could reasonably be viewed as an acceptable measure of what competition would bring. Ikard Manufacturing Company, 58 Comp. Gen. 54 (1978), 78-2 C.P.D. ¶ 315; Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703, *supra*. Since VCA stated in its submission that the Army notified it that the systems must be installed prior to the end of August, the date upon which a lease agreement for the equipment being replaced expired, the record showed that there was insufficient time after the default date,

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August 22, to conduct a new competition. Under these circumstances, we concluded that the Army had not acted improperly by ordering its requirements from the second low offeror under the original solicitation. Hemet Valley Flying Service, Inc., 57 Comp. Gen. 703, supra.

VCA argues that our decision is incorrect. VCA asserts that it could have satisfied the agency's needs by the end of August when the equipment was needed and concludes that there was no basis to award a sole-source contract to an alternate supplier. VCA further contends that its "proven ability" to perform prior to the end of August indicates the impropriety of the default termination. Further, VCA argues that the Army, by its actions, waived the original delivery date and, therefore, under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 49.402-3(c) (1984), was required, instead of defaulting VCA for late delivery, to set a new date for VCA to complete delivery.

While VCA states that the Army should have included it in the recompetition process because it believes it could have met the revised delivery schedule, our decision recognized that under the circumstances, the agency was not required to conduct a new competition and properly could order its requirements from the second low offeror under the original solicitation. VCA's disagreement with our decision does not establish that it was incorrect.

VCA's contentions that the termination of its contract was improper because VCA could have delivered by the end of August and that the agency waived the original delivery date concern the propriety of the default termination of VCA's contract. These are matters of contract administration within the jurisdiction of the contracting agency and the Armed Services Board of Contract Appeals under the disputes clause of VCA's contract and, therefore, are not for consideration by this Office under our Bid Protest Regulations. See 4 C.F.R. § 21.3(f)(1) (1985); Jim Challinor, B-218809, June 27, 1985, 85-1 C.P.D. ¶ 735.

Finally, VCA complains that the Army has retained possession of 28 computer systems that VCA delivered, that the Army may in fact still be using them, but that the Army refuses to pay for them. This matter also concerns contract administration and, therefore, is not for consideration by our Office.

Accordingly, since VCA has provided no factual or legal grounds upon which reversal or modification of our prior decision is warranted, we affirm that decision.

for Seymour Spies
Harry R. Van Cleve
General Counsel