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

FILE: B-219804.2 **DATE:** January 23, 1986

MATTER OF: Simulators Limited, Inc.--
Reconsideration

DIGEST:

1. GAO will not reconsider prior decision based on protester's allegation that the contracting agency was inept or its complaint that the prior decision was not based on an independent investigation by GAO.

2. Protest concerning the agency's award of a contract notwithstanding a pending protest is without merit where the agency has complied with the requirements of the Competition in Contracting Act.

3. Prior decision is affirmed on reconsideration where it appears from the record as a whole that, even without an informational deficiency the agency incorrectly perceived, the agency's overall conclusion that the protester's proposal was technically unacceptable would not have changed, and that conclusion would not be unreasonable.

Simulators Limited, Inc., requests reconsideration of our decision in Simulators Limited, Inc., B-219804, Dec. 4, 1985, 85-2 CPD ¶ ___. In that decision, we denied in part and dismissed in part Simulators' protest of the Army's rejection of its proposal and the proposed award of a contract to another firm under request for proposals (RFP) No. DAAH01-85-R-0245 issued by the United States Army Missile Command, Redstone Arsenal, Alabama. We affirm our prior decision.

Our Bid Protest Regulations state that a request for reconsideration of a decision of this Office must contain a detailed statement of the factual and legal grounds upon which reversal or modification of the decision is deemed warranted. 4 C.F.R. § 21.12(a) (1985). The request must specify any errors of law made or information not previously considered. Id. A request for reconsideration that fails to show that a prior decision was either factually or legally erroneous will not be considered. Tennessee Valley Authority--Reconsideration, B-218441.2, Sept. 25, 1985, 85-2 CPD ¶ 335.

In this case, except for the matters discussed below, Simulators' request for reconsideration consists entirely of charges that the contracting agency was "inept" and that this Office was remiss for refusing to conduct an independent investigation. These assertions do not satisfy the requirements set forth above for requesting reconsideration of a decision and, therefore, will not be considered further.

Some matters raised in the request for reconsideration require comment, however. First, in response to Simulators' complaint in its initial protest that the agency had awarded a contract notwithstanding the pendency of the protest, we said in our decision of December 4 that there was no need to consider that issue because the agency had reported that no award had been made yet. But, as Simulators now points out, the statement in our prior decision concerning the status of the award was incorrect. Actually, the agency had awarded a contract on September 3, almost 1 month after Simulators had filed its protest with this Office.

The factual error noted by the protester, however, does not require reversal or modification of our prior decision. Prior to awarding the contract, the Army informed us by telephone that a determination had been made under Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.104(b) (1984), to award the contract notwithstanding the pendency of Simulators' protest. That regulation, which is based on 31 U.S.C.A. § 3553(c)(2)(A) (West Supp. 1985), as added by the Competition in Contracting Act of 1984, title VII of Pub. L. 98-369, requires an agency to withhold award of a contract when it has received notice that a protest has

been filed, unless the head of the procuring activity finds that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for our decision. The agency is required to inform this Office of that finding. The agency complied with this requirement. Progressive Learning Systems, B-218483, July 23, 1985, 85-2 CPD ¶ 72.

Simulators also takes issue with the discussion in our decision of the agency's reasons for determining that Simulators' proposal was technically unacceptable. As indicated in the decision, the agency rejected the proposal because it did not comply with the specific requirements of solicitation paragraph L-22. Our decision listed among the examples of the agency's reasons for this determination the proposal's failures to (1) clarify the relationship between Simulators and a "predecessor" firm, (2) indicate on an organizational chart how many people would be assigned to each job category, and (3) provide for radio repair personnel. Simulators contends that its proposal was not deficient in these areas because its relationship with the predecessor firm was clear from resumes submitted with its proposal, its revised organizational chart did indicate proposed staffing levels, and radio repair personnel were not required by the solicitation.

We reviewed again the material that Simulators claims showed the relationship between that firm and what it says was its predecessor, Eglen Hovercraft. In this respect, the resume of Simulators' president indicates that he was also a stockholder and director of Eglen Hovercraft, and the resume of Simulators' proposed consultant indicates that he was formerly president of Eglen Hovercraft. Although these resumes suggest a connection between the two firms, there is no indication in the proposal exactly how the firms are related in such matters as assets, liabilities, contractual commitments, or trade secrets. In short, we cannot say that the agency was unreasonable in concluding that the relationship was unclear.

With respect to radio repair personnel, the solicitation stated that maintenance of the aerial target system (which includes radio control equipment) to be used in performing the contract would be the sole responsibility

of the contractor. It follows that the contractor would have to provide sufficient personnel to perform this function.

Upon further review of Simulators' proposal, as amended, we agree that the agency determined incorrectly that the firm's organizational chart did not indicate proposed staffing levels, at least with respect to all job categories except production and office workers. Our prior decision, however, listed eight examples of the many deficiencies cited by the agency in finding the proposal unacceptable--such as the failure of the proposal to describe the work performed under prior contracts or how that work related to what would be required in this procurement--yet Simulators has shown the agency's evaluation to be incorrect with respect to only one of the examples listed. From the record as a whole, we are convinced that even without the perceived deficiency regarding the organizational chart, the agency's overall conclusion that Simulators' proposal was technically unacceptable would not have changed. We could not find such a determination to be unreasonable.

The prior decision is affirmed.

Harry R. Van Cleve
General Counsel