



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Television Systems--Request for
Reconsideration
File: B-220087.5
Date: September 18, 1986

DIGEST

Request for reconsideration is denied where protester fails to show any error of law or fact in prior decision holding that contracting agency properly canceled invitation for bids (IFB) for design and installation of a local area network since agency's needs had changed to require a more extensive system than described in the IFB.

DECISION

American Television Systems (ATS) requests reconsideration of our decision in American Television Systems, B-220087.3, June 19, 1986, 86-1 CPD ¶ 562, in which we denied ATS' challenge to the Navy's decision to cancel invitation for bids (IFB) No. N00024-85-B-6408 for the design and installation of a local area network (LAN). Since ATS has failed to show any errors of law or fact in our prior decision, we deny the request for reconsideration.

The basic portion of the IFB was for the design of a LAN, a broad-band cable system linking various data processing equipment belonging to the Naval Air Systems Command (NAVAIR) and the Naval Sea Systems Command (NAVSEA) at their Crystal City building complex in Arlington, Virginia. The IFB also included option items for materials and supplies for installation of the system. In an earlier protest, we held that the procurement was for automatic data processing (ADP) equipment within the meaning of the Brooks Act, 40 U.S.C. § 759 (1982), and the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201-2.001 (1985). Since the Navy had not obtained a delegation of procurement authority (DPA) from the General Services Administration (GSA) as required by the Brooks Act and the FIRMR, we held that the Navy was without authority to conduct the procurement. Accordingly, we recommended that the Navy apply for a DPA from GSA, recognizing that compliance with the Brooks Act

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and the FIRMR might require revising the IFB. See Plus Pendetur Corp., et al., 65 Comp. Gen. 258, (1986) 86-1 CPD ¶ 107.

By letter dated March 28, 1986, the contracting officer advised ATS, the apparent awardee under the IFB, that the IFB had been canceled. The contracting officer relied on two principal factors to support the decision to cancel: (1) the Navy's needs had changed so that a more extensive system than called for under the IFB was required; and (2) additional procurement planning efforts and revisions to the IFB were required to comply with the Brooks Act and the FIRMR. With regard to its changed needs, the Navy stated that the Naval Data Automation Command, the command responsible for acquisition of ADP resources for the Navy, had determined that any LAN in the Crystal City area should be developed together with all the Navy commands located in that area, not just NAVAIR and NAVSEA, and, as a result, the Navy now required a different, more extensive LAN than called for under the IFB. We found that this change in the Navy's minimum needs was a compelling reason sufficient to justify cancellation of the IFB.

In its request for reconsideration, ATS reiterates its disagreement with the Navy's position that the system called for under the IFB will not meet the Navy's expanded need for a LAN serving all the Navy commands in the Crystal City area. Specifically, ATS characterizes the LAN called for under the IFB as an "infinitely expandable network" and contends that the addition of buildings or equipment to the system would not affect the LAN's ability to meet the Navy's needs.

In its comments on the request for reconsideration, the Navy elaborates on how its needs for a LAN have changed due to the requirement to include all the Navy commands in the Crystal City area. The Navy states that it must ascertain the topologies,^{1/} communications workloads, and ADP equipment inventories of all the commands which will use the LAN in order to select an appropriate design. The original IFB was based on the Navy's estimates of the communications needs of only two commands, NAVAIR and NAVSEA; since it now requires a LAN serving all the Navy commands in Crystal City, the Navy states, it first must determine the communications needs of the additional commands before it can select an appropriate design for the LAN. Accordingly, the Navy plans to study

^{1/} The term "topology" refers to the physical configuration of the network through which the data communications flow.

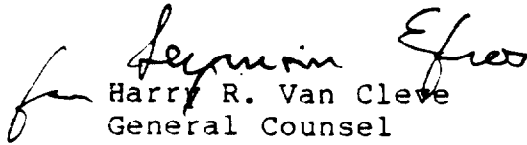
existing LAN technologies and the Navy commands' communications needs^{2/} and then use the study data to develop specifications leading to award of a contract for design of the LAN. After the design is selected, either the LAN will be installed pursuant to an option under the design contract, or the Navy will conduct a separate procurement for installation.

In its request for reconsideration, ATS does not dispute the Navy's position that the communications needs of all the user commands are crucial factors in selecting an appropriate LAN design. Rather, ATS states generally that the LAN it offered under the canceled IFB is capable of accommodating any changes in scope or technology that the Navy may require. Beyond its conclusory statements regarding the capability of its proposed LAN, however, ATS offers no specific explanation or support for its contention. For example, ATS cites several provisions in the IFB, such as the listing of Crystal City NAVSEA device types and inventory, but does not explain how these provisions support its assertion that the IFB called for a system which could meet any of the Navy's needs that might arise in the future. ATS thus has shown no basis to change our original finding that the Navy's decision to cancel the IFB was reasonable in light of its changed needs.

ATS also argues that if the Navy regarded the requirement to add all the commands to the LAN as changing its minimum needs, it would have canceled the IFB as soon as it was advised of the requirement in December 1985, rather than waiting to cancel until March 1986. The fact that the Navy did not cancel the IFB sooner than it did has no bearing on whether the Navy's changed needs justify the cancellation. See Chrysler Corp., B-206943, Sept. 24, 1982, 82-2 CPD ¶ 271. ATS also challenges the other grounds relied on by the Navy as justification for canceling the IFB. Since we have affirmed our original finding that the change in the Navy's minimum needs was a sufficient basis for cancellation, we need not consider ATS' contentions regarding the other grounds relied on by the Navy.

2/ We referred to the Navy's plan to conduct a design study in our original decision. In its reconsideration request, ATS contends that our reference to the design study must have been based on ex parte communications between our Office and the Navy, since ATS was unaware of the Navy's plan to conduct the study. The Navy advised us of its intention to conduct a design study in a letter dated May 13, 1986, sent pursuant to our request that we be advised by the Navy of action taken in response to our recommendation for corrective action in the Plus Pendetur decision. Further, contrary to ATS' assertion, no award for the design study of this project has yet been made, as both our prior decision on ATS' protest and the Navy report make clear.

Since ATS has failed to show any error of law or fact in our original decision, the request for reconsideration is denied.


Harry R. Van Cleve
General Counsel