



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Intercontinental Equipment, Inc.--  
Request for Reconsideration

File: B-224824.2

Date: November 12, 1986

## DIGEST

Prior decision is affirmed which held that compliance with a solicitation's U.S.-flag vessel preference clause is a matter of contract administration not for review under the General Accounting Office's bid protest function where the agency's interpretation and application of the clause had no direct bearing upon the propriety of the source selection decision, which was solely on the basis of the lowest-priced technically acceptable offer as set forth in the solicitation.

## DECISION

Intercontinental Equipment, Inc. (ICE), requests reconsideration of our decision in Intercontinental Equipment, Inc., B-224824, Oct. 10, 1986, 86-2 C.P.D. ¶ \_\_\_\_\_, dismissing ICE's protest against the award of a contract to Titan Intermodal Industries, Inc. (Titan), under solicitation No. N00033-86-R-3064, issued by the Military Sealift Command (MSC), Department of the Navy. We took such action because ICE's fundamental allegation that Titan had failed to comply with the solicitation's U.S.-flag vessel preference clause by shipping its offered supplies to the United States in foreign-flag vessels did not directly bear upon the propriety of the agency's evaluation of competing proposals, but rather involved a matter of contract administration which was the responsibility of MSC and not this Office under our bid protest function.

ICE now requests reconsideration of our October 10 decision on the ground that we erred by not considering the firm's contention that MSC had used different evaluation factors when comparing the proposals. In this regard, ICE asserts that the proposals were not fairly evaluated since Titan's offer did not include the cost of shipping the items in U.S.-flag vessels as required by the solicitation's vessel preference clause (which implements the Cargo Preference Act of 1954, 46 U.S.C. app. § 1241(b) (Supp. III 1985)).

Therefore, ICE urges that the award was improper because Titan's offer was artificially lower than its own due to the firm's intent not to comply combined with the agency's disinclination to enforce compliance. ICE asserts that this circumstance reflects the agency's erroneous interpretation of the clause as applying only to end items and not "components" as shipped by Titan.

We affirm our prior decision. ICE has not convincingly shown that the decision contains errors of fact or of law which require its reversal or modification. See Department of Labor--Reconsideration, B-214564.2, Jan. 3, 1985, 85-1 C.P.D. ¶ 13.

Contrary to ICE's assertion, we fully recognized in our prior decision that the firm's protest concerned the propriety of the proposal evaluation process. Thus, we summarized ICE's protest submission as a complaint that:

". . . the agency improperly interpreted and applied the solicitation's U.S.-flag vessel preference clause with respect to the evaluation of offers so as to exclude the firm from an award to which it was otherwise entitled."

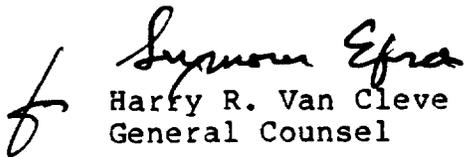
At the same time, however, we also recognized that the essence of this complaint was Titan's alleged noncompliance as abetted by the agency's view that the clause was inapplicable to a shipment of "components" as opposed to end items.

Accordingly, we did not consider the issue of Titan's ultimate compliance with the preference clause because it clearly involved a matter of contract administration, which was the agency's responsibility and, therefore, beyond the scope of our bid protest function. Similarly, we did not expressly reach the question of the soundness of MSC's particular interpretation because the Maritime Administration, which is statutorily charged with the review of the administration of the Cargo Preference Act by the various federal agencies, had already advised MSC that its interpretation was in error.

With regard to the agency's evaluation of proposals, we continue to believe that ICE's complaint does not present a valid basis for us to consider that the award to Titan was improper. Section M of the RFP provided that, "Technically acceptable offers will be evaluated on the basis of lowest price to the Government." It is undisputed that Titan's offer was technically acceptable without exception and, on its face, lowest in price. Accordingly, it is clear that

Titan was eligible for the contract award in conformity with the solicitation's express evaluation scheme. We point out that the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(1) (Supp. III 1985), specifically provides that competitive proposals shall be evaluated "solely on the factors specified in the solicitation." Simply stated, an offered price reflecting shipment in only U.S.-flag vessels was not an evaluation factor here.

Therefore, since the issues concerning Titan's compliance with the preference clause are essentially post-award in nature, and the award was itself consistent with the terms of the solicitation, we have no basis to consider the protest under our Bid Protest Regulations. 4 C.F.R. § 21.3(f)(1) (1986).

  
Harry R. Van Cleve  
General Counsel