

Van Schaik



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Navy--Request for
Reconsideration

File: B-234089.3

Date: May 8, 1990

Charles E. Raley, Esq., Israel and Raley, for the protester.
David H. Turner, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency request that General Accounting Office modify
corrective action recommended in original decision is denied
where request does not include any support for assertion
that recommended resolicitation would result in a delay of
300 days and significant cost to agency and firms that
submitted proposals under original solicitation.

DECISION

The Department of the Navy requests that we modify the
corrective action recommended in our decision Essex Electro
Eng'rs, Inc., B-234089.2, Mar. 6, 1990, 90-1 CPD ¶ _____, in
which we sustained Essex's protest that it was improperly
excluded from competing under request for proposals (RFP)
No. N00140-88-R-1712, for mobile load bank electrical power
plant test sets.

We deny the request.

We sustained Essex's protest because the Navy failed to
comply with regulatory requirements concerning the inclusion
of those furnished solicitations on the solicitation mailing
list. In this respect, although Essex requested and was
given a copy of the solicitation and some amendments, the
Navy failed to put Essex on the mailing list, Essex was not
sent later amendments that set the closing date and, as a
result, Essex failed to submit a proposal. We recommended

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that the Navy include Essex on the source list, cancel the solicitation and resolicit the requirement. We also found that Essex was entitled to be reimbursed its protest costs including reasonable attorneys' fees.

The Navy does not contest the merits of our decision. However, it challenges the recommended remedy, arguing that the less disruptive remedy of allowing Essex to compete under the current solicitation would be in the interests of all parties. According to the Navy, canceling the current solicitation and issuing a new one will result in "significant additional expense inherent in processing a new procurement," and unnecessary delay, estimated at 300 days, that would adversely affect the Navy's mission. The Navy also argues that firms that submitted proposals expended significant time and expense in doing so and canceling the solicitation would force those firms to prepare and submit entirely new proposals. The Navy argues that this is an unnecessary and unfair burden since allowing Essex to compete under the existing solicitation would put it in the position it would have been in had it received the amendments and been able to submit a proposal.

In response to the Navy's request, Essex argues that allowing it to submit an initial offer to compete against proposals submitted under the original competition is an unacceptable remedy. According to Essex, it is unfair to require it to compete against proposals submitted 8 months ago.

The Navy's request provides no basis for modifying our original decision. First, the Navy's contention that resolicitation would result in a delay of 300 days is not substantiated. Under applicable regulations, the Navy is required to publish notice of the solicitation in the Commerce Business Daily 15 days prior to issuing it and allow 30 days response time for proposals after the solicitation is issued. Federal Acquisition Regulation §§ 5.203(a) and (b). The Navy does not explain why, after 45 days for receipt of proposals and a reasonable period for proposal evaluation, 255 days would be required to award a contract. Further, although the Navy says it will incur "significant additional expense" to process a new procurement, the Navy's request includes nothing to support this assertion.

With respect to the burden on the firms that submitted proposals under the original solicitation, we have received no complaints from those firms regarding our decision. Moreover, it is not at all clear how offerors who submitted proposals and responded to the 15 amendments under the

original solicitation would be unduly burdened since those firms could, for the most part, simply resubmit those proposals.

Thus, while we would agree with the Navy that a resolicitation will involve some delay and some expense, we fail to see anything unreasonable about that expense or delay in light of the need for corrective action, a need stemming from the fact that before the protest was filed the Navy could have taken the corrective action which it now advocates but did not do so. Thus, we still think that under the circumstances here, the best way to ensure that all the firms are competing on an equal basis is to resolicit the requirement.



~~Acting~~ Comptroller General
of the United States