

Schatz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Person System Integration, Ltd.--Request for Reconsideration

File: B-236790.2

Date: May 29, 1990

Bernard R. Corbett, Esq., for the requesting party, Person System Integration, Ltd.
Keith Calhoun-Senghor, Esq., for the interested party, Technology Applications, Inc.
Sylvia E. Anderson, Esq., Office of General Counsel, Department of the Navy, for the agency.
Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where it is based upon information that was available, but not submitted, during consideration of original protest and it otherwise does not establish the existence of error in prior decision.

DECISION

Person System Integration, Ltd. (PSI), requests reconsideration of our decision in Technology Applications, Inc., B-236790, Jan. 10, 1990, 90-1 CPD ¶ 41, wherein we sustained Technology Applications, Inc.'s (TAI), protest of the Navy's award of a contract to PSI, under invitation for bids (IFB) No. N61339-89-B-2005, for the operation and maintenance of F-14A aircraft training simulators. We sustained TAI's protest on the basis that the Navy should have rejected PSI's bid as materially unbalanced.

We deny the request.

The IFB specifications required the contractor to keep the training simulators in ready-to-operate condition, and encompassed procuring, at contractor expense, certain spare and repair parts, and maintaining a prescribed stock inventory level. A fixed-price contract was to be awarded for a firm requirement for a 60-day mobilization period, an

048614/14464

initial 10-month option period, 3 subsequent option years, an additional 10-month option, and a final 60-day transition option period. TAI complained in its protest that PSI improperly had unbalanced its low bid of \$5,451,968 by frontloading 22 percent (\$1,210,365) into the initial 60-day mobilization period.

PSI explained that its bid for the mobilization period included the cost of extensive advance purchases of replacement parts, but we found that this front-loading rendered PSI's bid materially unbalanced. PSI's price for the 60-day mobilization period was 63 percent of the price for the 1-year performance period in the contract as awarded, and 22 percent of the potential 5-year contract price. This amount was so far in excess of the actual value of the items or services to be provided that acceptance of the bid would provide a disincentive for the government to administer (*e.g.*, terminate) the contract after the enhanced payments were made. In addition, we found that PSI's performance approach did not appear reasonable because the solicitation provided for the government to furnish the new contractor with the current inventory of spare parts, the government was not yet committed to exercising the options, and none of the other bidders frontloaded costs for advance parts purchases during the 60-day mobilization period.

In its request for reconsideration, PSI principally questions our conclusion that PSI's approach did not appear to be reasonable. First, PSI contends that we erroneously assumed that the solicitation provided that the Navy would furnish PSI with a spare parts inventory adequate to satisfy the performance requirements; according to PSI, it must substantially augment the current inventory to bring it up to the Navy's "recommended" spare parts level. In this regard, PSI for the first time refers to and furnishes an appendix G to the specifications, which PSI argues shows numerous shortfalls between the quantity of spare parts in the initial inventory and the quantity on hand. This appendix was neither made part of the original record nor brought into issue during our consideration of the protest.

Our Office will not reverse or modify a decision unless the request for reconsideration demonstrates that errors of fact or law in the original decision, or information not previously considered, warrant reversal. 4 C.F.R. § 21.12(a) (1989); Evans, Inc.--Request for Recon., B-218963.2, June 26, 1985, 85-1 CPD ¶ 730. We will not reconsider a decision where the reconsideration request is based on information that could have been but was not presented during our initial consideration of the matter.

Department of the Navy--Request for Recon., B-220991.2, Dec. 30, 1985, 85-2 CPD ¶ 728; see also General Servs. Administration--Recon., B-234682.2, Mar. 23, 1990, 90-1 CPD ¶ ____. Neither the agency nor PSI submitted appendix G to the solicitation or argued that it was in any way relevant to the protest. (Indeed, the agency never argued that PSI's pricing of the spare parts requirement was reasonable.) Thus, this additional information is not a basis for reconsidering our prior decision.

In any case, we are not persuaded appendix G demonstrates that PSI's approach to contract performance was reasonable. Although the Navy now indicates that bidding on the basis of appendix G was "not unreasonable," the agency reports that appendix G was included in the solicitation solely for the purpose of advising bidders of the Navy's inventory of spare parts at that time and not for the purpose of recommending that bidders establish a specific inventory level of spare parts in excess of parts on hand or on order. It is only with respect to the spare and repair parts furnished by the government at the beginning of the contract that the contractor must maintain a prescribed level; otherwise, the contractor's responsibility generally is limited to providing parts when they are needed to operate or maintain the simulators. Further, appendix G aside, it remains our view that PSI's approach of purchasing replacement parts in advance for years represented by options that the Navy was not yet committed to exercising is not reasonable, especially considering that the specifications stated that the Navy planned to undertake extensive, future modifications of the simulators, which could eliminate the need for many spare parts.

PSI also disputes our conclusion that the price for the 60-day mobilization period was far in excess of the actual value of the items or services to be provided. PSI claims that since it intends to purchase approximately \$1.1 million dollars worth of replacement parts during the 60-day mobilization period, the price the Navy will pay for the mobilization period (approximately \$1.2 million) will be equal to the value of the items and services that PSI provides.

PSI's position is incorrect. The terms of PSI's contract (which incorporated the proposal's terms) did not obligate PSI to purchase or supply any replacement parts other than those necessary to replace the parts it removes from inventory during performance. Nevertheless, under the contract PSI would receive approximately \$1.1 million dollars even if it did not purchase or supply a single item during mobilization. Moreover, the Navy will not receive

title to the spare parts TAI purchases that are not incorporated into the prescribed minimum stock inventory. As a result, if the Navy terminated the contract after the mobilization period or failed to exercise the option after the initial contract year, the Navy would have expended an amount well in excess of the actual value of the items or services it received. As indicated above, this would provide a disincentive for the agency to administer the contract in a manner consistent with its best interests if, for example, contingencies arose after the enhanced payments were made that ordinarily would warrant termination.

The request for reconsideration is denied.

Milton J. Fowler
for Comptroller General
of the United States