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Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Control Corporation--Reconsideration
File: B-251224.5
Date: August 16, 1993

Charles D. Ablard, Esq., G. Daniel Miller, Esq., and Jeff H. Eckland, Esq., Faegre & Benson, for the protester. Captain Gerald P. Kohns, Esq., and Richard Hoffman, Esq. Department of the Army, for the agency. Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision concluding that agency had a compelling basis to cancel a solicitation after bid opening where the specifications overstated the government's minimum needs is denied where the protester fails to show any error in the decision's analysis supporting that conclusion.

DECISION

Control Corporation requests reconsideration of our decision, Control Corp., Control Data Sys., Inc.--Protest and Entitlement to Costs, B-251224.2 et al., May 3, 1993, 93-1 CPD ¶ 353, in which we denied its protest challenging a decision by the Department of the Army to cancel invitation for bids (IFB) No. DABT63-92-B-0016, after bid opening. The solicitation was issued to procure regular and as-needed maintenance for certain computer equipment installed at Fort Huachuca, Arizona. Control argues that our prior decision erred in concluding that the Army properly canceled the IFB after bid opening.

We deny the request for reconsideration.

In our prior decision, we denied the protests by Control and Control Data Systems, Inc. that the Army lacked a compelling reason to cancel this procurement after bid opening, as required by Federal Acquisition Regulation § 14.404-1(a)(1). At issue in the case was the impact of an amendment to the solicitation that the Army claims was intended to double the allowable response time for maintenance calls from 2 hours to 4 hours. We concluded that, despite the Army's stated

intent, the amendment did not relax the IFB's response time. Instead, the amendment added a new 4-hour response time for what the amendment describes as "per call maintenance."¹

After facing earlier protests by both parties--brought in our forum and at the General Services Administration Board of Contract Appeals (GSBCA)--and after making award to first one and then the other of these parties, the Army concluded that the IFB was significantly flawed and should be canceled. In defense of its cancellation decision, the Army argued that the amended solicitation was ambiguous, or alternatively, that the amended solicitation overstated its minimum needs. Our analysis led us to reject the contention that the amended solicitation was ambiguous, although we concluded that the Army had a compelling reason to cancel the solicitation because the response time requirements overstated the government's minimum needs.

According to Control, we erred in concluding that the amended solicitation overstated the agency's needs, and should have concluded instead that the amended solicitation was ambiguous. Based on its conclusion that the amended solicitation was ambiguous, Control argues that we should have required the Army to award a contract to Control on the basis that Control's bid met the agency's actual needs.

To obtain reversal or modification of a decision on reconsideration, the requesting party either must convincingly show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of the decision. 4 C.F.R. § 21.12(a) (1993); Gracon Corp.--Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. For the reasons set forth below, Control's request for reconsideration fails to show that our analysis of the amended solicitation was in error.

Control argues that our Office should have concluded the solicitation was ambiguous because the Army intended to amend the solicitation to specify a 4-hour response time,

¹As we explained in our prior decision, the amendment at issue deleted pages 1, 2 and 4 of the 6-page statement of work (SOW), provided replacements for those pages, and left pages 3, 5 and 6 intact. The new pages 1 and 2 added a new response category for "per call maintenance," defined as unscheduled maintenance outside the Principal Period of Maintenance, and established a 4-hour response time for such maintenance. Since the amendment left page 3 intact, no change was made to the 2-hour response time required for maintenance within the Principle Period of Maintenance.

and because the contracting officer stated that the solicitation, as amended, was ambiguous. Control also points out that its comments on the agency report filed in response to the earlier protest set forth three alternate interpretations of the amended solicitation. According to Control, the prior decision should have focused on the rule that agencies may not cancel ambiguous solicitations after bid opening without a finding that competitive harm has been inflicted on bidders by virtue of the solicitation's ambiguity.²

While the Army intended to relax the response time--and while there is no doubt about what the contracting officer stated--the effect of the Army's amendment on the solicitation's statement of work was clear. Nothing in Control's request for reconsideration explains why we were wrong in concluding that the plain language of the statement of work is unambiguous, or why we should have found the Army's intent more persuasive than the clear wording of the solicitation. In addition, Control's mere repetition of the arguments it included in its comments filed in the earlier protest does not establish that we erred on this issue.

Upon concluding that the amended solicitation contained no ambiguity, but instead required two different response times--depending on whether a maintenance call was received during the Principle Period of Maintenance or afterwards--the only remaining question for our Office was whether the response time scheme overstated the agency's minimum needs. We reasoned that the solicitation overstated the Army's minimum needs in part because the contract awarded to Control as corrective action in response to the GSBCA protest contains a 4-hour response time. Given the use of a 4-hour response time for the current contract, we concluded that the agency could not solicit bids requiring a 2-hour response time for calls occurring within the Principle Period of Maintenance, and then accept a 4-hour response time during contract performance.

²In support of this proposition, Control cites GAF Corp.; Minnesota Mining and Mfg. Co., 53 Comp. Gen. 586 (1974), 74-1 CPD ¶ 68; Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275; Browning-Ferris Indus. of the South Atlantic, Inc.; Reliable Trash Serv. Co. of Md., Inc., B-217073; B-218131, Apr. 9, 1985, 85-1 CPD ¶ 406; and Hild Floor Machine Co., Inc., B-196419, Feb. 19, 1980, 80-1 CPD ¶ 140.

As a result, we concluded in our prior decision that the solicitation was properly canceled since the SOW overstated the agency's minimum needs. As with our conclusion that the amended solicitation was not ambiguous, nothing in Control's request for reconsideration establishes that we erred in its finding that the solicitation overstated the Army's minimum needs. Accordingly, the request for reconsideration is denied.


for James F. Hinchman
General Counsel