

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

60248

FILE: B-184310

DATE: November 28, 1975

MATTER OF: In-Trol (International Controls)

97649

DIGEST:

Absent a showing of error of law or fact, original decision is affirmed since invitation requirements permitted submission of varying delivery periods and since open-ended delivery terms, while potentially contrary to sound procurement policy, were not per se contrary to requirements in FPR and were not misused by contracting officer to detriment of any bidder.

By decision B-184310 of October 9, 1975, In-Trol (International Controls), our Office upheld the award of a contract by the Veterans Administration to a firm offering a delivery date of 100-120 days after receipt of the order since only a desired delivery date of 30 days from the date of award was set forth in the invitation, and bidders were permitted to submit varying delivery periods.

In-Trol requests that we reconsider that decision. First, it is contended that the delivery time requested in the invitation was a firm, rather than a desired, time. Secondly, it is noted that the delivery clause was contrary to the Federal Procurement Regulations (FPR) and left room for partiality in the treatment of bidders.

Both of these contentions were treated thoroughly in our decision of October 9. The paragraph in the invitation concerning delivery requirements stated: "Delivery within 30 days from date of award, unless otherwise specified below * * *." Inasmuch as this clearly allows the submission of a delivery period other than 30 days, we cannot agree that delivery within 30 days of award was a firm requirement. As regards the second basis for reconsideration, we do not believe that the delivery requirements were per se contrary to the cited FPR provisions. Nothing in those provisions specifically forbids use of the requirements the contracting activity used. We simply noted in our decision that, while the requirements were legally sufficient, we did not feel that as a matter of policy use of such open-ended delivery terms was wise inasmuch as they afford an opportunity for the arbitrary inclusion or exclusion of bids. However, we found no arbitrary use of the requirements by the contracting officer and, consequently, had no basis for disturbing the contract as awarded.

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Accordingly, there being no showing that the decision of October 9 was in error in law or in fact, it is affirmed.

Paul B. Steubling
Acting Comptroller General
of the United States