

Mr. Roberts

17354

DECISION



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

FILE: B-195832.2

DATE: March 17, 1981

MATTER OF: Cummins-Allison Corporation-Request for
Reconsideration

DIGEST:

Where request for reconsideration specifies no error of law or facts not previously considered by GAO but merely challenges GAO conclusions regarding reasonableness and propriety of agency determination to cancel solicitation without requesting best and final offer, no basis for further consideration of issue exists and prior decision is affirmed.

Cummins-Allison Corporation requests reconsideration of Cummins-Allison Corporation, B-195832, April 29, 1980, 80-1 CPD 304. In that decision, we denied Cummins' protest regarding the Federal Communications Commission's (FCC) actions in issuing and subsequently canceling request for proposals (RFP) 79-03 (under which Cummins was the only acceptable offeror) for computer hardware and accompanying software, and to continue leasing the required computer equipment under an existing General Services Administration (GSA) Automatic Data Processing schedule contract. We concluded that the FCC's actions were reasonable and in accordance with applicable procurement regulations.

The RFP was canceled after negotiations had begun and without a request to Cummins to submit a best and final offer. On reconsideration, Cummins reiterates the argument that since meaningful negotiations were conducted between the FCC and Cummins, the Federal Procurement Regulations required the FCC to call for a best and final offer from Cummins before canceling the solicitation.

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This issue was thoroughly addressed in the April 29 decision which stated, in pertinent part:

"* * * Ordinarily, a procuring agency must allow offerors within the competitive range to submit a best and final offer by a common cutoff date. University of New Orleans, 56 Comp. Gen. 958 (1977), 77-2 CPD 201.

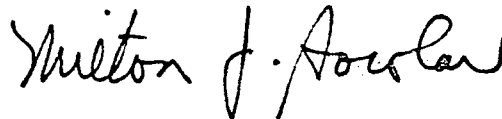
"Here, however, the record indicates that the FCC conducted price negotiations with Cummins at two separate meetings. Initially, the FCC informed Cummins that its proposed prices were not 'any more advantageous to the Government than those offered [by Cummins] to commercial firms.' After an analysis of the most advantageous method of acquisition -- lease -- and after expressing in-house concern regarding the Cummins proposal price vis-a-vis the Nixdorf lease price [under the GSA schedule contract], the FCC held more price negotiations with Cummins and requested 'a figure close to their best and final offer.' At this point, Cummins offered a rental discount of five percent for months 1-48, seven percent for months 49-60, 10 percent for months 61-72, and 15 percent for months 73 through 84.

"Although the FCC did not request a formal best and final offer, we believe the record reasonably supports the FCC determination to cancel the RFP at this stage of the procurement. Cummins, as indicated above, offered gradually increasing discounts for the system's life. It appears, however, that the protester would have had to substantially increase these rental discounts in a formal best and final offer to overcome the competitive cost advantage of the Nixdorf equipment during the first four years of the system's life. The memorandum of price negotiations shows that although Cummins stated that its discounts could be increased, it conditioned this offer on the FCC's willingness to include a favorable liquidated damages clause in the contract, as well as more favorable delivery and transportation cost provisions. Because these and similar modifications to the RFP were not

acceptable to the FCC, it appears unlikely that further negotiations with Cummins would have resulted in substantially more favorable rental discounts."

Cummins has not specified any errors of law or facts which were not considered and discussed in our initial review of and decision on the propriety of the FCC's determination to cancel the RFP without requesting a formal best and final offer from Cummins. Since our Bid Protest Procedures at 4 C.F.R. § 20.9(1980) require that requests for reconsideration be based on errors of law or facts not previously considered, Cummins provides no basis for us to review the matter further. Bokonon Systems, Inc. -- Reconsideration, B-189064, August 8, 1978, 78-2 CPD 101.

Our prior decision is affirmed.



Acting Comptroller General
of the United States