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DECISION



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

FILE: B-205279.2 **DATE:** January 25, 1983

MATTER OF: System Sciences Incorporated--Request
for Reconsideration

DIGEST:

1. On request for reconsideration, when alleged factual errors would not change conclusion and all legal arguments previously have been considered, GAO will affirm prior decision.
2. When, in best and final offer, previously acceptable technical proposal is changed so that it becomes technically unacceptable, agency has no obligation to reopen discussions, and meaningfulness of earlier discussions is not affected by agency's failure to do so.

System Sciences Incorporated, alleging errors of both fact and law, requests reconsideration of our decision on its protest regarding the Air Force's rejection of an offer for a computerized information system to be used in support of the Airborne Warning and Control Systems (AWACS) Program Office. Because the alleged factual errors would not change our conclusion, and because we previously have considered System Sciences' legal arguments, we affirm our decision.

In System Sciences Incorporated, B-205279, July 19, 1982, 82-2 CPD 53, we found the Air Force's rejection of the protester's proposal proper because, in its best and final offer, the firm had substituted a pen plotter (used to produce graphic displays, or "plots," of computer-generated information) for the brand name electrostatic plotter specified by the Air Force and originally proposed by System Sciences.

In its request for reconsideration, System Sciences first argues that we misstated one of its bases of protest, which we characterized as an

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objection to a new and undisclosed requirement for plotter speed. The firm states that its objection actually was to a "seemingly new and undisclosed, unsupportable evaluation requirement of 30 seconds/plot." (Emphasis original.)

There was no requirement for equipment that could produce a plot in 30 seconds. As our decision indicated, the solicitation in question did not specify any plotter speed; it merely called for a Versatec printer/plotter or equal. However, in a letter to System Sciences in which it summarized discussions, the Air Force stated that the contractor was to provide an electrostatic printer/plotter and paper for an average expected usage of 750 plots a month.

Our decision used this estimate to show, hypothetically, that a minimum plotter speed could be inferred from the Air Force letter. Our point was that speed was not a completely new or undisclosed evaluation factor, and that System Sciences should have been aware of it.

The alleged "30 seconds/plot" requirement stems from an evaluation summary in which the Air Force expressed concern about the ability of a pen plotter to meet its needs, due to the detail and size of AWACS Program Office plots and the fact that a pen plotter typically takes from 15 to 30 minutes to produce a single plot. The Air Force noted that the Versatec equipment it was then using could produce a plot in 30 seconds.

Because System Sciences changed to a pen plotter after discussions had been concluded, the Air Force could not determine the actual speed of the proposed equipment. Under these circumstances, we continue to find the rejection of System Sciences' proposal on this basis proper.

System Sciences further contends that the Air Force requirement for an electrostatic plotter was latently ambiguous, and that since the Air Force drafted this term, it should be construed in the manner most favorable to System Sciences, i.e., as including a pen plotter with an electrostatic hold-down for securing paper. We already have considered this argument, finding that the term electrostatic was not ambiguous.

The firm also argues that several of the cases cited in our decision, for example, Bell & Howell Company, B-203235.5, April 16, 1982, 82-1 CPD 378, denying a protest because the equipment offered was not functionally equivalent to the brand specified, are inapplicable. System Sciences argues that it demonstrated during a conference at our Office that its proposed Hewlett-Packard pen plotter, which operates with eight microprocessor-controlled pens, is functionally equivalent to a Versatec printer/plotter. In our prior decision, we held that the pen plotter proposed by System Sciences was neither an electrostatic plotter nor functionally equivalent to a Versatec printer/plotter. Since System Sciences has merely incorporated its earlier arguments on this point in its request for reconsideration, we will not review them again. See W. M. Grace, Inc.--Request For Reconsideration, B-202842.2, September 21, 1981, 81-2 CPD 230; Richard Bercutt--Request for Reconsideration, B-199819.2, January 22, 1981, 81-1 CPD 35.

In addition, System Sciences argues that our examples showing why it had not been materially prejudiced by the Air Force's failure to state its requirements for the printer/plotter in more specific terms were factually incorrect. We stated that the Air Force regarded the proposal as presenting significantly higher risks than the awardee's because (1) System Sciences could not estimate the extent of adaptation required to transfer its proposed International Business Machines software to a different host computer; (2) System Sciences proposed to train Air Force personnel from Hanscom Air Force Base, Massachusetts, at an IBM facility in Los Angeles; and (3) in its best and final offer, System Sciences sought to remedy its lack of experience by employing subcontractors or consultants for training and backup graphics production.

Although System Sciences argues that our statement regarding adaptation is not true, the record shows that in response to a question concerning use of its software on systems other than IBM's, System Sciences advised the Air Force that "without a definition of other candidate host processor equipment, it is impossible to specify the extent of adaptation * * *." The Air Force's evaluation summary states that in a pending move of the AWACS Program Office, it would lose flexibility and risk additional, unknown costs because of potential adaptation problems with System Sciences.

System Sciences correctly points out that in its best and final offer, the firm proposed orientation by a subcontractor in Massachusetts instead of training in Los Angeles. Evaluating this change, however, the Air Force noted that the training was limited to 20 persons and, as stated in our prior decision, that new personnel and changing requirements would not receive sufficient attention under this arrangement.

System Sciences adds that it had proposed the use of subcontractors or consultants from the beginning as a logical combination of resources, rather than as a remedy for lack of experience. Regardless of System Sciences' purpose in proposing subcontractors, as we initially noted, the Air Force stated that the Government should not be relying on third parties to resolve system problems that normally would fall within the purview of the contractor, and considered this an additional risk. All of the above examples support our conclusion that System Sciences would not have been selected for award in any event.

Finally, throughout its request for reconsideration, System Sciences states that the Air Force never discussed the electrostatic features of the printer/plotter with it. The firm argues that our conclusion that the Air Force's 11 written requests for clarification constituted meaningful discussions therefore is erroneous. As we previously pointed out, during discussions the Air Force was led to believe that System Sciences would provide Versatec equipment; asked whether it would be available within the 60 days specified, System Sciences advised the Air Force in writing that it had issued a purchase order to Versatec. Not until its best and final offer did System Sciences announce that it had canceled the purchase order and was substituting a pen plotter. Under these circumstances, the Air Force was under no obligation to reopen discussions, see Colorado Research and Prediction Laboratory, Inc.--Reconsideration, B-199755.2, May 11, 1981, 81-1 CPD 369, cited in our prior decision, and its failure to discuss the electrostatic feature of the printer/plotter in no way affects the question of whether earlier discussions were meaningful.

Our prior decision is affirmed.

for Milton J. Fowler
Comptroller General
of the United States