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DECISION



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

FILE: B-193157.2

DATE: August 21, 1979

MATTER OF: Downtown Copy Center -- Reconsideration *DLG00027*

DIGEST:

1. Prior decision denying protest against amendment and proposed modifications to solicitation as unduly restrictive of competition and violative of Service Contract Act, 41 U.S.C. § 351 (1976), is affirmed. Protester has not met burden of proof to establish subsequent wage determination.
2. Procuring activity's regulations, which provide that agency's contracts with commercial firms do not limit right of public to inspect and extract information from agency's records and prescribe hourly search fee for search services performed by agency personnel, evidence fact that use of commercial contractor is at discretion of public and reflect fee for services performed by agency, consistent with requirements of Freedom of Information Act, 5 U.S.C. § 552 (1976).

Downtown Copy Center (DCC) requests reconsideration of our decision Downtown Copy Center, B-193157, April 12, 1979, 79-1 CPD 261, denying its protest against amendments and proposed modifications to request for proposals (RFP) No. 78-13 issued by the Federal Communications Commission (FCC), concerning the "search fee" rate to be charged by the prospective contractor. DCC contended that a \$5 hourly search fee limitation imposed by an amendment to the RFP was unduly restrictive of competition; the protester's objections to the amendment were rendered moot by the FCC's proposed modifications to the RFP to delete the \$5 search fee limitation based upon the FCC's regulation, 47 C.F.R. § 0.466 (1977), and to indicate the present contractor's \$10 hourly search fee. The FCC intends to use the \$5 search rate as a guideline to advise offerors of its rough estimate of the value

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of the search service. DCC, however, took exception to the proposed modifications to the RFP, asserting that the solicitation would still be unduly restrictive of competition. In denying the protest, we found that the RFP did not preclude negotiation concerning the procuring activity's search service needs and that it provided adequate minimum wage information from which offerors could formulate their technical and cost proposals.

DCC requests reconsideration of our decision on the basis that a minimum hourly wage determination, exclusive of fringe benefits, for the position "researcher" was granted by the FCC after our decision was issued. The protester asserts that the researcher wage rate (\$5 to \$6 per hour) will be added to the RFP and that with the \$5 guideline, the FCC will be in violation of the Service Contract Act (SCA), 41 U.S.C. § 351 (1976), and Federal statutes. DCC claims as error our interpretation of the FCC's regulations, contending that the public is required to use the services of the agency's commercial contractor and concludes that because the FCC regulations do not state that the public has a choice of obtaining services from either FCC personnel or the agency's commercial contractor, the FCC's regulations are in violation of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976).

The FCC states that, contrary to the protester's assertions, it has not granted DCC a wage determination. Rather, the contracting officer and DCC personnel met on April 23, 1979, to discuss whether the SCA is applicable to DCC's current copy contract and whether a wage determination for research persons employed under that contract could be negotiated pursuant to 29 C.F.R. § 4.6(2) (1978). The FCC further asserts that as a result of their meeting, DCC was to submit a proposed classification and wage and fringe benefits for the contracting officer's review, but the firm has not done so.

A request for reconsideration must contain a detailed statement of the factual and legal grounds warranting reversal or modification and specify any errors of law made or information not previously considered in our decision. 4 C.F.R. § 20.9 (1979). In the absence of such a statement, our Office has no

basis upon which to reconsider the decision. Department of Commerce, et al., 57 Comp. Gen. 615, 618 (1978), 78-2 CPD 84; Data Pathing, Inc.--Reconsideration, B-188234, July 11, 1977, 77-2 CPD 14.

DCC has raised the researcher wage determination as new information. Initially, application of the SCA to and negotiation of a wage determination under DCC's current contract constitute matters of contract administration which are not for resolution under our Bid Protest Procedures. See, e.g., D.C. Electronics, Inc., B-184266, March 8, 1976, 76-1 CPD 160; Harding Pollution Controls Corporation, B-182899, February 6, 1976, 76-1 CPD 77. Moreover, the FCC unequivocally denies that a wage determination has been granted, thus creating an irreconcilable conflict between the agency's and the protester's positions. Where the only evidence before us consists of contradictory statements by the protester and the contracting agency, the protester has not met the burden of affirmatively proving its allegations. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337; Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244.

We cannot agree with DCC's characterization of the FCC regulations, 47 C.F.R. § 0.441-0.467 (1978), as requiring that the public must use the agency's commercial contractor. The regulations provide, in pertinent part, that:

"(2) Contractual arrangements which have been entered into with commercial firms, * * * do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Any person may, in addition, make photocopies of Commission records with his own equipment at locations where those records may be inspected. * * *" 47 C.F.R. § 0.465(c)(2) (1978). (Emphasis added.)

The search fee regulation, 47 C.F.R. § 0.466 (1978), pertains to the cost of searching for records requested under §§ 0.460(d) and 0.461, which require that records requested must be reasonably described

to permit their location by staff personnel. 47
C.F.R. §§ 0.460(c) and 0.461(a) (1978). We therefore
remain of the opinion that use of the agency's com-
mercial contractor is at the discretion of the public
and that the FCC regulations adequately reflect that
option in addition to the search fee currently charged
for that service by the FCC, consistent with the
requirements of the FOIA.

Accordingly, our decision of April 12, 1979, is
affirmed.


Deputy Comptroller General
of the United States