

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548****FILE:** B-209604.2**DATE:** June 20, 1983**MATTER OF:** Automation Analysis, Inc.--  
Reconsideration**DIGEST:**

Although merits of protest are determined appropriate for GAO consideration upon request for reconsideration, protest is denied where the protester's allegation that the agency failed to properly apply a solicitation wage increase requirement is found to be based on the protester's misinterpretation of the requirement.

Automation Analysis, Inc. (AAI) requests reconsideration of our decision, Automation Analysis, Inc., B-209604, September 12, 1982, 82-2 CPD 438, in which we dismissed AAI's protest under solicitation No. 82-10 issued by the Federal Communications Commission (FCC). In that decision, we found that AAI's protest was not for consideration on the merits because its allegation that the proposed awardee had submitted a below-cost bid did not constitute a legal basis for precluding award, and AAI's allegation that the proposed awardee might be paying its employees wage rates below those required by the Service Contract Act, 41 U.S.C. § 351, et seq. (1976) (SCA), was a matter of contract administration for consideration by the Department of Labor (DOL), not by our Office.

In its request for reconsideration, AAI asserts that these were not the real bases of its protest; rather, it was protesting that FCC was proposing to award to Vanguard Technologies Corporation (Vanguard) in contravention of a specific solicitation requirement which referenced SCA wage requirements. While we have held that the administration and enforcement of the SCA rest with DOL and not with our Office, we will review a question of whether a contracting agency properly evaluated a solicitation's SCA provision where this involves an issue of whether all offerors were afforded an opportunity to compete on an equal basis. JVAN, Inc., B-202357, August 28, 1981, 81-2 CPD 184; Education Service District of Washington County, B-198726, B-198792, November 19, 1980, 80-2 CPD 379. Viewing AAI's protest in this light, we find it without merit.

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The procurement in question is for computer facility management services. The 14 bids received were evaluated on the basis of the total of the bidder's price for the 1983 fiscal year plus the price for the fiscal year 1984 and 1985 option periods. The low bidder was rejected as nonresponsive and, subsequently, award was made to the next low bidder, Vanguard, at a total estimated price of \$1,365,669.76. AAI's bid of \$1,406,077.92 was fifth low.

The solicitation required that the "vendor's cost proposal for each of the option renewal periods contain increases in wage rates and benefits commensurate with the increases granted by DOL during the preceding 3 years (FY80, FY81, and FY82)." Compliance with this criteria was specified as a requirement for eligibility for award. In addition, the solicitation restricted the awardee's eligibility for equitable price adjustment based on increases in DOL wage determinations to job categories for which this increase exceeds the percentage of increase stated in the contract.

In evaluating compliance of the bids, FCC interpreted the "commensurate increase" requirement to mean that the wage rates for each year include an increase equal to one-third of the total increase for the labor category in question over the 3-year period. Where a category was not included in the wage determination, the FCC applied an average of the overall annual rates of increase. Thus, for example, if a labor category had experienced increases in wage determination rates of 5 percent in FY 1980, 9 percent in FY 1981 and 4 percent in FY 1982, FCC calculated the average annual increase--6 percent in this example--and evaluated the bids in terms of compliance with a 6-percent-per-year increase requirement.

By contrast, AAI interprets the language to require that the wage determination increases be applied on a year-by-year basis, with the result that, in this example, the 1984 wage increase would have to be 9 percent in order to be compliant. AAI prepared its bid accordingly and argues that Vanguard's bid does not meet this requirement in several instances. The only other wage rate of Vanguard's bid to which AAI objects is that for the tape librarian category, based on AAI's understanding that a rate derived from a DOL annual wage survey which was provided by FCC during a prebid conference was applicable

to the solicitation. However, the solicitation specifically included a lower rate which was stated to be the actual DOL wage determination for this category.

FCC contends that AAI's interpretation of the increase formula clause is not in accord with the intent or meaning of the clause and indicates that Vanguard's bid contains wage rates which are compliant with the required wage increase formula as intended and interpreted by FCC. FCC also notes that all 13 bidders other than AAI interpreted the requirement in this manner.

We find that FCC's interpretation that "commensurate increase" was intended to mean commensurate with the average increase for the 3-year period is reasonable. There is no particular logical reason to apply the 1982 increase to the 1985 wage rate estimate, or the 1981 increase to the 1984 wage rate estimate. Rather, the intent of the requirement is to assure that the contractor will include rate increases which are realistic reflections of recent wage history. This can be more reasonably done by taking the rate of increase over the 3-year period and applying the average for each option year rather than by applying the rate increase on a year-by-year basis for years to which there is no special logical concordance. In this regard, we find it significant that apparently all 13 bidders other than AAI utilized the calculations based on the definition intended by FCC.

We note that while AAI has asserted that its interpretation resulted in certain anomalies in wage rates in its bid calculations, it has nowhere asserted that its total bid could or would have been any lower had it been able to use an interpretation of the wage rate increase requirement other than that which it did use.

We deny the protest.

*for*   
Comptroller General  
of the United States