DECISION

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

29454

FILE: B-212302.2 DATE: October 2, 1984

MATTER OF: Ingram Barge Company--
Request for Reconsideration

DIGEST:

Prior decision is affirmed where request for reconsideration reflects protester's disagreement with GAO interpretation of language in solicitation and does not specify information not previously considered, nor demonstrate any error of fact or law.

Ingram Barge Company (Ingram) requests reconsideration of our decision in Port Arthur Towing Company, B-212302, Sept. 4, 1984, 84-2 C.P.D. ¶ _____. In that decision, we sustained Port Arthur Towing Company's (Patco) protest that the Military Traffic Management Command, Department of the Army (Army), had improperly accepted a nonresponsive bid submitted by Ingram. We recommended that a monthly option exercise with Ingram be discontinued as soon as the Army could substitute a new contract awarded under a solicitation which implemented various drafting changes which the Army had conceded were appropriate.

We affirm our decision.

In our decision, in relevant part, we found that the solicitation in question required that bidders provide certain barges with the capacity to carry 215,000 to 220,000 barrels of fuel at a specified draft, but that the quotation by Ingram, the awardee, offered barges which were explicitly listed as having a carrying capacity of only 214,000 barrels. We concluded that Ingram's quotation was nonresponsive and, therefore, that award to Ingram was improper.

In its request for reconsideration, Ingram argues that:

". . . the decision's interpretation of the solicitation as requiring a barge capacity with a 'lower threshold' of 215,000 barrels is incorrect. Specifically . . . the most reasonable interpretation . . . is a capacity of 'approximately' 215,000 barrels, thus making

> Ingram's tender of capacity to lift 214,000 barrels responsive to the requirement. Alternatively, even if the capacity statements in the solicitation are amenable to an interpretation that the lower threshold of capacity is 215,000 barrels, they are also amenable to the interpretation that the required capacity is approximately 215,000 barrels. In this latter case, where there are two reasonable interpretations of the contract's requirements, it was error to select the interpretation which invalidated the award to Ingram."

Ingram raised essentially these same arguments in its comments as an interested party to the protest, and they were considered by our Office in its interpretation of the meaning of the solicitation requirements. It was our conclusion that the only reasonable interpretation of two separately listed solicitation requirements--one for capacity of approximately 215,000 barrels, and one for capacity of 215,000 to 220,000 barrels--was to establish a requirement of an approximate capacity which falls within the range of 215,000 to 220,000 barrels. We found that while the range constituted an approximation, it was clear that the lower threshold was 215,000 barrels.

To the extent that Ingram is arguing that our decision contains an error of fact, we find that Ingram has misconstrued the solicitation language. In particular, Ingram points out that the clause providing for a capacity requirement of 215,000 to 220,000 barrels is preceded by a requirement for an "approximate quantity of barges" (emphasis added by Ingram) providing this capacity. Ingram argues that our decision fails to give meaning to the word "approximate" in this clause, since it cannot modify the quantity of barges, because the offerors were required to specify furnishing of specific barges. Thus, Ingram argues that "approximate" must have been intended to modify the capacity range. However, in fact, the solicitation did contemplate an approximate quantity of barges which could meet the capacity requirement, as is evidenced by other specification language which refers to two-thirds of the barges meeting an end rake requirement, rather than listing a fixed number of barges. Thus, bidders listed different numbers of barges--varying from nine to 12--which could meet the capacity requirement.

Ingram argues further that our decision fails to give meaning to the solicitation clause calling for barges with a capacity of "approximately 215,000 barrels." As Ingram correctly asserts, the governing rule of contract interpretation is that all parts of a contract must be read together and harmonized, if at all possible, and that the contract must be considered as a whole so as to give meaning to all of its parts. Ingram concludes that our decision violates this rule in that it gives no meaning to the word approximate in one of the two contract clauses. However, this view is contrary to our decision analysis. We specifically interpreted the use of "approximate" to modify the 215,000-barrel requirement as consonant with the specification of a range rather than a fixed-capacity requirement. That is, we considered that the net effect of the two clauses, read in concert, was to set forth an approximate requirement--a range rather than a set figure--but one which included a lower threshold. Thus, our decision analysis was in accordance with the principle that a contract should be read as a whole and harmonized if at all possible. Ingram's disagreement with this conclusion does not in itself constitute a valid basis to reverse our decision. Treat Wood Products--Request for Reconsideration, B-214041.2, June 1, 1984, 84-1 C.P.D. ¶ 590.

Accordingly, since Ingram has not established that our decision sustaining Patco's protest was based on error of law or failed to take into account all relevant information, that decision is affirmed. Tilipman Elevator Co., Inc.--Request for Reconsideration, B-213245.3, May 22, 1984, 84-1 C.P.D. ¶ 541.

Milton J. Socolar

for Comptroller General
of the United States