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

**FILE:** B-220459.2 **DATE:** June 10, 1986

**MATTER OF:** C&W Equipment Co.--Reconsideration

**DIGEST:**

Prior decision is affirmed where additional facts regarding agency's discussions with the offeror selected for award do not establish that the agency engaged in technical leveling or technical transfusion during those discussions.

C&W Equipment Co. requests reconsideration of our decision in C&W Equipment Co., B-220459, Mar. 17, 1986, 86-1 CPD ¶ 258, in which we denied a protest that the Veterans Administration, in discussions with the awardee, International Laundry Machinery, Inc., engaged in technical leveling and technical transfusion in violation of the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 15.610(d)(1) and (2) (1984).

We affirm our prior decision.

On November 20, 1985, C&W protested the award of a contract to International under request for proposals (RFP) No. M6-Q88-85, for furnishing and installing a laundry system in a new building at the VA Medical Center in Houston, Texas. On March 20, shortly after issuance of our decision denying the protest, we received a letter that our Office previously had requested in which the VA addressed matters discussed in C&W's response to the administrative report. C&W contends that the March 20 submission by the VA disclosed new facts regarding the procurement that warrant reconsideration of our decision.

C&W's protest largely consisted of claims that specific questions or comments made to International during discussions constituted technical leveling and/or technical transfusion. In its March 20 letter, the VA offered more detailed explanations of the challenged questions than had been contained in the administrative report. These

explanations are consistent with our prior understanding of the purpose for the questions, based upon our reading of the procurement record.

Briefly stated, the discussions that C&W complains about, including relevant details supplied in the VA's March 20 letter, are as follows:

1. The VA told International that small piece folders must be in tandem with folding tables. C&W argues that International's tables already met the requirement in the sense that the firm proposed placing them one behind the other. According to C&W, the VA really wanted International to place the tables at a 90 degree angle as C&W had done. The VA, apparently understanding the term "in tandem" to mean being used in conjunction with or together, states that International's tables were not in tandem, and, after this requirement was pointed out, the firm independently decided to place its tables at a 90 degree angle.

2. The VA pointed out to International that its finished goods conveyor fell 11 feet short of its second flatwork ironer. C&W claims that this constituted improper coaching; the VA believes it merely pointed out "an uncomplicated, easily correctable deficiency."

3. The agency told International: "Conveying uniforms and patient clothing needs to be addressed. How does it work?" C&W states that "conveying" patient clothing was not required by the RFP, and that the idea originated with C&W. The VA responds that International's proposals showed two conveyors drawn diagonally across each other, and the agency only wished to know how the conveyors functioned.

4. C&W contends that according to its supplier, when C&W offered a garment finisher that was in excess of the RFP requirements, the VA conveyed this information to International,

causing it to upgrade its equipment similarly. The VA denies such a contact and suggests that International may have learned about C&W's offer from their common supplier.

5. The VA asked International whether its "Auto Valet" size should be "F" instead of "E." C&W states that it included descriptive literature in its proposal and a design drawing referring to a size F Auto Valet uniform delivery system, and that the VA's question was intended to prompt International also to offer a size F. The VA states that International's proposal was apparently ambiguous regarding the letter designation of the Auto Valet equipment offered, and the agency wished to know if the letter designations related to capacity of the equipment.

The solicitation provided that award would be made to the offeror proposing the lowest price for a laundry system meeting the VA's requirements. Neither International's nor C&W's initial proposals were acceptable. Concluding that both were reasonably susceptible of being made acceptable, the VA pointed out numerous deficiencies in the proposals before seeking best and final offers.

In our prior decision, we found that C&W had not established that the VA statements cited constituted improper coaching intended to bring International's proposal up to that of C&W (i.e., technical leveling), or that the VA disclosed information in C&W's proposal that resulted in improvement of International's proposal (i.e., technical transfusion). The detail provided in the VA's March 20 letter is consistent with that view. For example, in our decision we stated that a reasonable reading of the VA's advice about small piece folders being "in tandem" with folding tables was that the agency wished the tables to be used in conjunction with each other not that a particular angle was required. The March 20 letter merely confirms our view of the agency's understanding of the term "in tandem" and the purpose for its comment to International. C&W has not established that the VA engaged in technical leveling or transfusion. Rather, we believe that taken as a whole, the record shows that the agency engaged in meaningful discussions with the offerors by pointing out weaknesses and deficiencies as required by the procurement regulation. FAR, 48 C.F.R. § 15.610.

Additionally, we note that in each of the areas in which C&W claims that the VA disclosed information about its proposal, the protester states or implicitly acknowledges that International's proposal met the RFP requirements before the alleged disclosures. As discussed above, selection for award was based upon the lowest cost, acceptable proposal. Thus, even if some or all of the allegedly improper disclosures actually occurred, they would not have improved International's prospects for selection since its proposal was otherwise acceptable and offered the lowest cost.

We affirm our prior decision.

Harry R. Van Cleve
General Counsel