



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Union Natural Gas Company--Reconsideration

**File:** B-224607.2

**Date:** April 9, 1987

## DIGEST

1. In order to prevail in a request for reconsideration of a prior decision of the General Accounting Office, the requesting party must convincingly show that the decision contains errors of fact or of law or information not previously considered that warrant its reversal or modification. The repetition of arguments made during resolution of the original protest, or mere disagreement with the decision, does not meet this standard.

2. General Accounting Office views solicitation that prevented competition on an equal basis, along with procuring activity's need to reconsider the government's minimum needs, as sufficient reasons to render cancellation and resolicitation, rather than amendment of the original solicitation, reasonable.

3. Showing of bad faith requires undeniable proof that procuring activity had a malicious and specific intent to injure the party alleging bad faith, and a protester's bare charge regarding intent of the procuring activity in issuing solicitation and suggestion that procuring activity may have been negligent in not "doing its homework" do not constitute such proof.

## DECISION

Union Natural Gas Company requests reconsideration of our decision in Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ \_\_\_\_\_. In that decision, we denied a protest by Union against the cancellation of request for proposals (RFP) No. 1213, issued by Northrop Worldwide Aircraft Services, Inc., the Air Force's operations and maintenance contractor for Vance Air Force Base, Enid, Oklahoma. The solicitation called for the furnishing of natural gas to the base.

We deny the request for reconsideration.

The particular facts of the case and our legal analysis are set forth in our January 9 decision and need not be repeated at length here. In summary, we found the cancellation proper and denied Union's protest that Northrop had not fairly considered its proposal or negotiated in good faith. Northrop had canceled the solicitation and rejected all proposals because it was unable to reach an agreement with Union, the apparent low offeror, as to pricing and contract structure. Northrop determined that Union's proposed terms and conditions--in particular a \$248,780 termination liability in the event the contract was terminated in less than 10 years--were unacceptable and did not meet the best interests or minimum needs of the Air Force.

However, based on the record, we found that the circumstances of the procurement involved more than proposal unacceptability. We viewed the inability of the parties to reach an agreement to be a result of Northrop's failure to decide in advance upon what basis it could contract for natural gas and how it would compare offers proposing differing methods. In the solicitation, Northrop had asked offerors to specify any contractual provisions that they desired, yet it had not explained how offers on different bases would be evaluated. For example, Northrop concluded during discussions with Union that a termination liability provision offered by Union was unacceptable, yet the solicitation invited terms, including connection or termination liabilities if an offeror proposed to construct new distribution lines. We recognized that the solicitation prevented competition on equal terms, since offerors did not know in advance the basis on which their proposals would be evaluated. Accordingly, we found that Northrop had a reasonable basis for canceling the solicitation, both in order to correct the deficient solicitation and to reconsider the government's minimum needs. Further, we found no indication of bad faith on the part of contracting officials in making the decision to cancel, as suggested by Union. Rather, we found it apparent from the record that Northrop did not discover the solicitation deficiencies until it encountered difficulties in reaching an agreement with Union.

The protester now requests reconsideration of our January 9 decision, primarily on the basis that it did not address the alleged bad faith actions of Northrop in issuance of the RFP, evaluation of proposals, and negotiation. As previously mentioned, we found no indication of bad faith by Northrop. However, Union now specifically contends that in order to have good faith negotiations, Northrop should have issued a written amendment with the changed requirements and allowed

offerors an opportunity to submit revised proposals, rather than cancel the RFP. Union also repeats its contention that its proposal was not evaluated on the basis of the evaluation factors contained in the RFP. Additionally, Union generally contends that the procuring activity exhibited bad faith in issuing the RFP with the unstated intention of utilizing the incumbent contractor's pipeline. Union further contends that the procuring activity failed to "do its homework" before issuing the solicitation and issued the solicitation in order to determine market conditions. The protester also questions how there can be a reconsideration of the government's minimum needs when the "minimum requirement" is 100 percent of the amount of gas consumed, and will not change upon reconsideration. Finally, Union maintains that our decision was based on misinformation supplied by Northrop and the Air Force.

At the outset, we note that the established standard for reconsideration is that the requesting party must convincingly show that our prior decision contains either errors of fact or of law or information not previously considered that warrant its reversal or modification. See 4 C.F.R. § 21.12(a) (1986); Roy F. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. Repetition of arguments made during resolution of the original protest or mere disagreement with our decision does not meet this standard. *Id.* Additionally, a showing of bad faith requires undeniable proof that the procuring activity had a malicious and specific intent to injure the party alleging bad faith. Boone, Young & Associates, Inc., B-199540.3, Nov. 16, 1982, 82-2 CPD ¶ 443; see also Kalvar Corp., Inc., v. United States, 543 F.2d 1298, 1301 (Ct. Cl. 1976). Mere inefficiency or negligence does not meet the high standard of proof required to show bad faith. Boone, Young & Associates, Inc., supra.

We conclude that Union's request for reconsideration provides no basis for us to question the correctness of our January 9 decision. Union's request is primarily a repetition of its previous arguments, as well as disagreement with our decision. The protester has not made a showing that our decision contained errors of fact or law that warrant reversal or modification.


In our January decision, although we did not specifically discuss amendment of the RFP versus cancellation, our determination as to the reasonableness of the cancellation was based on the other-than-minor nature of the solicitation deficiencies. When the government's need or basis for award changes after proposals have been received, the government may not proceed with award; it must either amend the

solicitation to advise offerors of the change and provide offerors with an opportunity to submit revised proposals or cancel the solicitation altogether. Federal Acquisition Regulation, 48 C.F.R. §§ 15.606(a), (b)(4) (1986). If the modification is so substantial that it warrants complete revision of a solicitation, the original should be canceled and a new solicitation issued. 48 C.F.R. § 15.606(b)(4).

Here, we view the RFP deficiencies that resulted in unequal competition, along with the procuring activity's need to reconsider the government's minimum needs, as sufficient reasons to render the procuring activity's determination to cancel and resolicit reasonable. Accordingly, the protester has provided no basis for us to question the propriety of canceling the solicitation, rather than amending it. Additionally, Union's allegation as to evaluation of its proposal under the RFP is academic. Award could not have been made under the RFP, since there was no basis to evaluate proposals solicited on different bases. Additionally, the government's minimum needs involve more than simply the amount of gas consumed. They also include the minimum acceptable terms and conditions for the sale of gas to the government, such as change of rates, price escalation, construction charges, and termination liabilities. It is these terms and conditions of the gas procurement that will be reconsidered by the procuring activity before it issues a new solicitation.

Further, neither Union's bare charges regarding the bad faith intent of the procuring activity in issuing the solicitation nor Union's suggestion that Northrop may have been negligent in not "doing its homework" constitute proof of bad faith. Finally, as Union has not detailed the misinformation it alleges our January decision was based on, this does not provide a basis for reconsideration of our decision.

We deny the request for reconsideration.

  
Harry R. Van Cleve  
General Counsel