



The Comptroller General
of the United States

Washington, D.C. 20548

10/2/87

Decision

Matter of: Consolidated Photocopy Company, Inc. and
Downtown Copy Center, A Joint Venture--
Reconsideration
File: B-225526.2
Date: May 4, 1987

DIGEST

Prior decision, holding that agency did not waive a material solicitation requirement solely for the benefit of one offeror but waived it also for the benefit of the protester, is affirmed where the protester fails to present facts or legal arguments to establish that the prior decision was erroneous.

DECISION

Consolidated Photocopy Company, Inc. and Downtown Copy Center, a joint venture (Consolidated), requests reconsideration of our decision, Consolidated Photocopy Company, Inc. and Downtown Copy Center, A Joint Venture, B-225526, Mar. 20, 1987, 87-1 CPD ¶ _____, denying its protest that the Federal Communications Commission (FCC) improperly awarded a contract, under request for proposals (RFP) No. 86-08, to International Transcription Services, Inc. (ITS), for nonpersonal services and materials for the search, retrieval and duplication of documents maintained by the FCC and which are releasable to the public under the Freedom of Information Act or FCC regulations. Specifically, Consolidated had alleged that the agency prevented it from competing on an equal basis with ITS by effectively relaxing a solicitation requirement solely for the benefit of ITS that the successful contractor provide two experienced factory trained repair personnel on-site to maintain copier-duplicating machines.

We affirm our prior decision.

Briefly, the solicitation required, among other things, that the successful contractor install, maintain, and fully service copier-duplicating machines and microfiche reader/printers on-site at various FCC locations. The solicitation stated that machine malfunctions must be responded to within 2 working hours and repairs completed within 8 working hours of notification of machine failure.

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The solicitation also contained (at paragraph C.6.5.5) the following provision:

"Contractor shall provide a minimum of two experienced factory trained repair personnel on-site at the Commission's Washington, D.C. offices at all times. On call factory repair personnel shall be provided by the contractor to serve the Laurel, MD and Gettysburg, PA facilities. Back-up shall be provided by the contractor through a service agreement with the vendor of the equipment."

The solicitation further stated that "factory-trained repair personnel" would be considered essential to the performance of the contract and that the resumes of such personnel must be provided for evaluation.

Four proposals were received and discussions were held with the offerors determined to be within the competitive range. Best and final offers were received and the FCC technical evaluators found the ITS proposal to be the most advantageous proposal. Accordingly, FCC awarded the contract to ITS. Consolidated's protest followed.

In its initial protest, Consolidated had principally alleged that ITS failed to propose two experienced factory trained repair personnel as required by the RFP. We reviewed the proposals and the evaluation documents and found that the resumes submitted by ITS to satisfy this RFP requirement indicated that ITS' proposed technicians would only be essentially responsible for cleaning and supplying the equipment, rather than repairing the machines. However, based on our review of Consolidated's proposal, we found that Consolidated also did not meet the requirement for experienced factory trained repair personnel. We stated that in its best and final offer, Consolidated only proposed two reasonably qualified factory trained repair personnel who would be on-site for a two-week "break-in" period; after this initial period, Consolidated would provide "newly trained technicians" who would be trained at the factory so long as Consolidated had a "thirty-day lead time." Since these replacement technicians were not yet hired or trained, no resumes of their background and experience had been provided in Consolidated's proposal. Further, we noted that the short period of time proposed for factory training, and the accompanying proposed course schedule at the factory, indicated that these proposed technicians would not be fully trained and experienced repair personnel. Finally, we concluded that the lack of resumes for the permanently assigned repair personnel proposed by Consolidated did not, in any event, provide an

adequate basis for evaluation. Thus, we held that if there was any waiver of the subject requirement by FCC, it was applied equally to ITS and Consolidated.

In its request for reconsideration, Consolidated characterizes the holding of our initial decision as erroneously envisioning a "hiatus" (lapse of continuity of service) between the departure of the factory trained repair personnel after the two week "break-in" period and the arrival of the newly trained technicians. Consolidated states that in its initial proposal it offered to assign two factory trained repair technicians on-site and thereafter to hire two new technicians; the former would stay on-site not just for the two-week period but "until suitable replacements are trained." Consolidated also notes that key personnel, including the two factory trained repair personnel, could not be replaced without prior submission of their resumes and their approval by the contracting officer. Thus, according to Consolidated, there was no lapse of continuity of service and the RFP did not require resumes for "future replacement key personnel."^{1/}

We reject these arguments. Our decision was not based on a perceived lapse of continuity of service by Consolidated's factory trained repair personnel. We simply found, and Consolidated does not dispute, that it failed to provide in its proposal resumes for permanently assigned repair personnel even though, because they were identified as key personnel, the RFP required such resumes to be provided for evaluation. We also again note, and Consolidated again does not dispute, that the short period of time proposed by Consolidated for factory training of these new technicians, and the accompanying proposed course schedule at the factory, indicate that these proposed technicians would not be fully trained and experienced repair personnel. Accordingly, we find no merit to Consolidated's request for reconsideration of the finding of our prior decision that

^{1/} In its request for reconsideration, Consolidated also requests our Office to examine in camera a line item price breakdown of ITS' offer since Consolidated speculates that line items 1 and 2 of the ITS proposal were unbalanced. This allegation by Consolidated is purely speculative since Consolidated has not been provided any detailed price information by FCC. In any event, we have examined the prices of both offerors and we see no evidence of unbalancing.

neither ITS nor Consolidated met the RFP requirement in question.

Our prior decision is affirmed.

A handwritten signature in black ink, appearing to read "Milton F. Abolarinwa". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States