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Comptroller General
of the United States

61776

Washington, D.C. 20548

Decision

Matter of: National Steel and Shipbuilding Company--
Reconsideration

File: B-254394.2

Date: May 27, 1994

Grant L. Clark, Esq., McKenna & Cuneo, for the protester.
Joseph P. Grassi, Esq., and Stephen J. Wenderoth, Esq.,
Department of the Navy, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Request for reconsideration is denied where protester has not shown that prior decision contained errors of fact or law, nor has it presented information not previously considered.

DECISION

National Steel and Shipbuilding Company (NASSCO) requests reconsideration of our decision in National Steel and Shipbuilding Co., B-254394, Nov. 24, 1993, 93-2 CPD ¶ 299, in which we denied its protest of the terms of invitation for bids (IFB) No. N62791-93-B-0082, issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), for the repair and overhaul of the Navy ship U.S.S. Mahlon S. Tisdale. The protester argued that the Navy failed to comply with its statutory obligations concerning the identification and quantification of hazardous wastes expected to be generated during the performance of the contract.

We deny the request for reconsideration.

The repairs and alterations of the Tisdale were described in numerous work items incorporated into the solicitation; several of these work items involved the removal of paint from specifically identified areas of the ship. The IFB also included NAVSEA standard work item No. 077-01-001, "Hazardous Waste Produced on Naval Vessels; handling and disposal." This work item required the successful contractor to remove, handle, store, transport, and dispose of all hazardous waste identified within the work item, and referenced 10 U.S.C. § 7311 (Supp. V 1993), a statute which

requires the Secretary of the Navy to ensure that each contract entered into for work on a naval vessel (other than new construction) includes a provision in which:

> "The Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste." 10 U.S.C. § 7311(a)(1).[1]

In the space designated for the quantification of any lead-containing paint expected to be produced as hazardous waste during the repairs and alterations, work item No. 077-01-001, as amended, listed "1,000 pounds/15 gallons." Finally, amendment No. 0002 added clause C-25, "Paint Containing Lead," which provides: "[c]onsider all paint on naval vessels to contain lead and/or chromate unless it can be established otherwise by laboratory analysis."

NASSCO filed an agency-level protest of the solicitation, arguing that clause C-25 was inconsistent with both the Navy's statutory obligations under 10 U.S.C. § 7311 and with the terms of work item No. 077-01-001. After the protest was denied, NASSCO filed a protest in our Office, arguing that: (1) clause C-25 improperly conflicted with the hazardous waste disclosure in work item No. 077-01-001 concerning the quantification of lead-containing paint; (2) the solicitation improperly failed to sufficiently identify the location or distribution of lead paint throughout the work areas; and (3) the solicitation improperly failed to include sufficient information regarding the actual amount of hazardous waste, including removal material, expected to be generated during the performance of the contract.

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[1]The Secretary of the Navy is to renegotiate such a contract if the contractor, during the performance of work under the contract, discovers hazardous waste different in type or amount from those identified in the contract, where those hazardous wastes originated on, or resulted from material furnished by the government for, the naval vessel on which the work is being performed. 10 U.S.C. § 7311(b).

In denying NASSCO's protest, we stated that the solicitation identified the various individual work items involving paint removal; clause C-25 identified all paint on board the ship as lead-containing paint; and work item No. 077-01-001 quantified the amount of lead-containing paint expected to be generated as hazardous waste as a result of the performance of all of the solicitation's work items. As a result, we saw no reason to object to the Navy's use of clause C-25 in conjunction with other provisions that served to identify and quantify the hazardous wastes expected to be generated during the performance of the contract. We also found that the solicitation sufficiently identified the locations of the lead-containing paint, considering the identification of the individual work items involving paint removal and clause C-25's identification of all paint on board the ship as lead-containing paint. Finally, we found that NASSCO had abandoned its argument concerning the actual amount of hazardous waste, including removal material, expected to be generated.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law, or present information not previously considered that warrants reconsideration of the decision. 4 C.F.R. § 21.12(a) (1993). A party's mere disagreement with the decision does not meet this standard. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

In its request for reconsideration, NASSCO asserts that: (1) it did not abandon its argument concerning the sufficiency of the estimates of lead paint contained in the solicitation; (2) work item No. 077-01-001 and clause C-25 cannot be reconciled because not all paint on board the ship contains lead; and (3) the statute requires that the solicitation identify the locations of lead paint on board the ship.

NASSCO's first contention is based upon a misreading of our decision. The abandoned argument to which we referred did not concern the sufficiency of the estimates of lead paint contained in the IFB, but, rather, the sufficiency of the estimates of hazardous waste--lead paint plus any spent abrasive or chemical material used to remove the paint--expected to be generated during the performance of the contract. While NASSCO initially raised this argument, it did not rebut or respond to the agency's position, contained in its report, that work item No. 077-01-001 "provided estimated quantities of hazardous waste (paint and blast grit) expected to be generated during the performance of the contract," and its explanation that these were estimated

quantities, in part, because contractors could use various paint removal techniques which would yield various quantities of abrasive or chemical removal media.

During the protest, NASSCO did contend that the solicitation's estimate of lead-containing paint was erroneous in the context of its argument that overbidding would result unless the Navy was required to identify the locations of lead-containing paint. NASSCO argued that all of the paint to be removed under the solicitation did not contain lead since, it asserted, the use of lead paint on board U.S. Naval vessels was declining; if the Navy did not identify the locations of the lead-containing paint, bidders would have to factor in the high costs of lead-paint removal procedures even for those surfaces which did not contain lead paint, thereby resulting in overbidding.

In our decision, we discussed these arguments and the Navy's responses. The Navy stated that the use of lead paint on board Navy vessels was not rare, cited examples of the use of such paint, and explained that while current specifications call for low-lead paint, even paint with low-lead levels can exceed the permissible exposure limit if removed improperly. The Navy also reported that, while testing might identify the lead content of paint exactly where tested, different results might be obtained inches away from where tested. As a result, the Navy asserted that it was more prudent to direct contractors to consider that lead paint would be encountered in all paint removal operations. The protester's only specific response to the Navy's position was to repeat that "lead use has greatly declined," and to state that it is "common knowledge" that not all paint on ships contains lead. Considering the record, we found that if the protester was correct in its assertion that knowledgeable firms would overprice, the Navy was simply accepting the risk that it might pay more for a safer operation, a position we found unobjectionable. We concluded that the Navy had provided sufficient detail in this solicitation to permit competition on a relatively equal basis, and was not required to remove any uncertainty from the minds of prospective bidders or to eliminate every performance risk. J&J Maintenance, Inc., B-248915, Oct. 8, 1992, 92-2 CPD ¶ 232.

NASSCO's request for reconsideration essentially asserts that the Navy's estimate is erroneous because there is a possibility that all paint to be removed will not contain lead. However, the protester has provided us no basis upon which to disagree with the Navy's statements concerning the widespread use of lead-containing paint on board Naval vessels and the difficulties involved in ascertaining its concentrations. As a result, while the amount of lead-containing paint expected to be generated, as contained

in work item No. 077-01-001, may not be absolutely correct, we have no reason to believe that it was not based on the best information available. See H. Angelo & Co., Inc., B-244682.2, Oct. 30, 1991, 91-2 CPD ¶ 407.[2]

As for NASSCO's assertion that the Navy did not consider the location of the lead paint in the calculation of its estimate, during the protest, the Navy stated that the statement of work contained the locations of jobs that might require paint removal, and that work item No. 077-01-001, the Navy's estimate, was based on the total amount of paint to be removed from those jobs. Since these individual work items clearly identified the areas from which paint was to be removed, such as "fuel oil tanks," it is apparent that the Navy did in fact consider the location of the lead paint in the calculation of its estimate.

NASSCO finally argues that a "fair reading" of the statute requires that the locations of lead paint be identified in the solicitation.

As we stated in our decision, the statute requires the Navy to identify the type of hazardous waste "in a form sufficient to enable the contractor to comply with laws and regulations on the removal and disposal of such waste." We found that the specific work items requiring paint removal, when read in conjunction with clause C-25's identification of that paint as containing lead, was sufficient identification to meet the Navy's statutory obligation as regards this solicitation. NASSCO's mere disagreement with our decision does not provide a basis for reconsideration. See R.E. Scherrer, Inc., supra.

The request for reconsideration is denied.

/s/ Robert H. Hunter
for Robert P. Murphy
Acting General Counsel

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[2]For this reason, NASSCO's argument that clause C-25 contradicts and undermines the estimate of lead paint contained in work item No. 077-01-001 does not persuade us to reconsider our decision. The Navy asserts that virtually all of its paint contains lead, and that the estimate in the work item is the total amount of paint estimated to be removed under the contract.