mary Curcio

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Control Corporation--Reconsideration

File: B-259553.2

Date: July 18, 1995

DECISION

Control Corporation requests reconsideration of our decision Control Corp., B-259553, Jan. 20, 1995, in which we dismissed Control's protest of the terms of request for proposals (RFP) No. N00123-94-R-0325, issued by the Department of the Navy for mainframe computer maintenance services, including diagnostic software. Control asserted that the diagnostic software was owned by Control Data Corporation (CDC) and that CDC would not license any other firm to use it. Control protested that the Navy was refusing to exercise rights it owned in the software pursuant to an earlier contract with CDC, which would permit the agency to provide the software to the successful offeror. Control also protested that the Navy improperly failed to solicit a proposal from Control or send the firm a solicitation amendment that was issued after September 16, 1994, the closing date for receipt of proposals.

We affirm the dismissal.

We dismissed as untimely Control's protest against the Navy's failure to provide the diagnostic software because Control learned the basis of protest on October 26, but did not file its protest until December 2, more than 10 working days later. See 4 C.F.R. § 21.1(a)(2) (1995). We also dismissed Control's contention that the Navy failed to solicit Control or send Control an amendment issued after the closing date for receipt of proposals. Since Control did not timely protest the Navy's failure to indicate in the solicitation that the diagnostic software would be provided to the successful offeror, and since Control did not have the capability to compete for the requirement without such a provision, Control was not an interested party to raise this issue. See The Entwistle Co., B-249341, Nov. 16, 1992, 92-2 CPD ¶ 349.

Control asserts that our conclusion that it is not an interested party to protest that the Navy failed to solicit Control, or provide Control with the amendment that was issued after the closing date, is erroneous because Control never stated that it could not compete unless the Navy amended the solicitation. Control asserts that while it

would have leveled the field of competition if the diagnostic software were to be furnished to the successful offeror by the government, Control always planned to use its own diagnostics to compete under the RFP.

In its protest, Control complained that the Navy's failure to provide the diagnostic software to the successful offeror made the solicitation unduly restrictive of competition. Control also stated that if the Navy did not have the right to provide the diagnostic software, it essentially faced making a sole-source award. In addition, Control stated that it did not submit a proposal under the RFP because it was waiting for the Navy to amend the RFP or to delete the requirement for diagnostic software. Given these statements, we believe our Office reasonably concluded that Control could not compete for the requirement unless the Navy provided the software or deleted the requirement for software. However, even assuming that Control has the diagnostic software to compete for the contract, its argument is without merit. The Navy published notice of the procurement in the Commerce Business Daily, as required by Federal Acquisition Regulation (FAR) subpart 5.2, and provided a copy of the solicitation to Control. There was no further obligation on the part of the Navy to solicit a proposal from Control. Further, since Control did not submit a proposal in response to the RFP, the Navy was not required to provide Control with the amendment to the RFP that was issued after the closing date for receipt of proposals. See FAR § 15.606(b)(2); Loral Fairchild Corp., B-242957.2, Aug. 29, 1991, 91-2 CPD ¶ 218.

The dismissal is affirmed.

Ronald Berger

Ronald Berger
Associate General Counsel