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

FILE: B-188743

DATE: March 21, 1978

**MATTER OF: Gull Airborne Instruments, Inc.--
Reconsideration****DIGEST:**

1. GAO has no authority to direct a procuring agency to conduct an investigation of alleged criminal conduct or to investigate on its own alleged criminal conduct. Notwithstanding this position GAO has reserved the right to question responsibility findings where--unlike the instant case--the findings show a violation of law such as to taint procurement.
2. Since purported, admittedly revoked assignment only referred to "proposal commitments" rather than "bid commitments" and was not specifically applicable to IFB in question, there is no need to consider protester-procuring agency arguments relating to assignment.

Gull Airborne Instruments, Inc., has requested reconsideration of our decision in Gull Airborne Instruments, Inc., 57 Comp. Gen. 67 (1977), 77-2 CPD 344. Our decision denied Gull's protest against the proposed award of a contract to Consolidated Airborne Systems, Inc. (CAS), by the Department of the Navy. Gull had objected to the Department of the Navy's proposed award to CAS on several grounds--the grounds of which, insofar as are pertinent to the request for reconsideration, are summarized, as follows:

- (1) The Navy improperly disregarded Gull's claim that CAS misrepresented certain activities such that "there may have been a criminal violation of the securities law";

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(2) The Navy improperly relied on an "infusion-of-resources" and "transfer of assets" agreement between Bendix Corporation and CAS in finding CAS to be responsible.

As to the first ground of protest, we pointed out that, although Gull was free to pursue these allegations with those regulatory commissions concerned as well as the procuring agency, we would not consider the allegations. We so concluded because this ground of protest essentially questioned the Navy's finding that Gull was responsible and, as a general rule, GAO no longer questions responsibility findings save for a showing of fraud on the part of procuring officials or the involvement of so-called "definitive" responsibility criteria. Since neither of the exceptions applied here, Gull's ground of protest was rejected.

As to the second ground of protest, we found that under the given circumstances--namely: the facts that there were no formal plans to dissolve CAS as a corporate entity incident to the CAS-Bendix agreement and that CAS may possibly do some business in its own name in the future so long as it does not compete with Bendix--it was proper for the Navy to rely on the agreement in finding CAS to be responsible.

Gull's request for reconsideration complains that:

(1) Our decision failed to direct the Navy to conduct an investigation of suspected CAS criminal conduct; in the absence of a Navy investigation GAO was required to investigate. Moreover, GAO has reserved the right (see, for example, Atlantic Maintenance Company, B-181519, February 24, 1975, 75-1 CPD 108) to "review criminal violations";

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(2) In any event "fairness requires that the Navy make an affirmative statement that there has been no fraud or bad faith on the part of any procurement official in reaching the affirmative finding of responsibility";

(3) Should GAO consider the practical effects of the CAS-Bendix agreement it must conclude that CAS "no longer exists" and that it was improper for the Navy to rely on the agreement in finding CAS to be responsible;

(4) Even though a purported assignment of the CAS bid was revoked GAO should still have considered the Gull-Navy arguments about the propriety of an award under an assignment of the CAS bid;

(5) CAS's low bid was not as low as stated in the decision.

We reply to the above-numbered grounds supporting the request for reconsideration, as follows:

(1) GAO has no authority to direct a procuring agency to conduct an investigation of alleged criminal conduct or to investigate on its own alleged criminal conduct. See SIMCO Electronics, B-187152, August 31, 1976, 76-2 CPD 209. The Atlantic Maintenance Company decision, *supra*, at page 10, is not contrary to the SIMCO Electronics' position but simply announces our Office's reserved right to question a responsibility finding where the "contracting officer's findings [show] a violation of law such as to taint the procurement." None of the contracting officer's findings concerning the CAS-Bendix agreement showed a violation of law sufficient to "taint the procurement" here;

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(2) It is implicit in the Navy's prior report on the protest that there has been no fraud or bad faith on the part of any procurement official in finding CAS to be responsible. We do not agree that the implicit Navy position needs to be made explicit;

(3) This argument merely rewords the position previously considered and rejected in our prior decision; hence it will not be considered;

(4) Since the purported, admittedly revoked assignment, which only referred to "proposal commitments" rather than "bid commitments," was not specifically applicable to the IFB in question there is no need to consider the Gull-Navy arguments on the propriety of the assignment of the CAS bid;

(5) Since CAS's bid is admittedly low, it is irrelevant as to how low it actually is.

Prior decision affirmed.


Acting Comptroller General
of the United States