

DECISION

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

26572

FILE: B-201642.3; B-201642.4 **DATE:** October 21, 1983

MATTER OF: Four-Phase Systems, Inc.--
 second request for reconsideration

DIGEST:

Prior decision finding that agency's determination of minimum needs for computer systems was unreasonable based on GAO audit reports finding that workload projections and studies on which determination was based were erroneous is affirmed; however, recommendation of decision that systems not be purchased is withdrawn because it is not in the government's best interest.

The Federal Aviation Administration (FAA), Department of Transportation, and Small Business Systems, Inc. (SBS), request reconsideration of our decision in Four-Phase Systems, Inc.--request for reconsideration, B-201642.2, April 22, 1983, 83-1 CPD 430, in which we found that the FAA's justification of its statement of minimum needs in request for proposals No. DTFA01-80-R-31147, for regional computer systems, was not reasonable. We recommended that the FAA decline to renew the leases at the end of the lease term and that FAA not purchase the systems.

We affirm our decision, but we withdraw the recommendation, based on new information establishing that the recommended corrective action is not in the government's best interest.

In Four-Phase Systems, Inc. B-201642, July 22, 1981, 81-2 CPD 56, we denied Four-Phase Systems, Inc.'s (Four-Phase), protest that, among other things, the FAA was procuring computing capacity in excess of its minimum needs. We found that Four-Phase had not carried its burden of showing that the FAA's justification of its minimum needs was unreasonable. On April 5, 1982, the FAA awarded a contract to SBS.

On April 20, 1982, GAO issued an interim audit report which concluded that the FAA had not adequately justified its need for the computer systems based on workload

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projections and studies of alternative means of satisfying those needs. That report recommended that FAA cancel the contract.

Based on that report, Four-Phase requested that we reconsider our decision and argued that our report proved its case regarding minimum needs.

FAA responded to the report and the request for reconsideration essentially by disagreeing with the findings of the report. That response was considered by GAO and found to be unpersuasive. Consequently, we issued a second report affirming the findings and recommendations of the first.

Our April 22 decision was based on the factual findings of the two GAO reports, particularly regarding the adequacy of the FAA's projection of its workload and its studies of alternative means of meeting its needs, at the time that it was planning this procurement. As we stated in the decision, we applied the standard of review that an agency's determination and statement of its minimum needs will not be overturned unless it is shown to be unreasonable. Based on the findings of our reports that the workload projections and alternate means studies that the FAA had relied on to justify its purchase of the computer systems were faulty and based on outdated information, the decision found that FAA had not reasonably justified its minimum needs.

During the pendency of the request for reconsideration, we were informally advised that FAA was leasing the computer systems and had not purchased them. Our recommendation was based on that advice.

The FAA and SBS raise numerous complaints concerning our April 22 decision. These complaints fall into three basic categories: (1) complaints about the accuracy of the GAO reports and the weight to be accorded them in a legal decision, (2) complaints about the merits of the legal decision itself, and (3) arguments concerning the feasibility of implementing the recommendations contained in the legal decision.

Concerning the GAO reports, the FAA and SBS argue, generally, that such reports are concerned with the best approach to solving a problem and, to that end, take positions regarding agency technical judgments. Those

parties state that bid protest decisions do not take such positions, and that the decisions grant great deference to agencies in the technical judgment area. FAA and SBS contend that, to the extent that the two GAO reports are accurate, the findings and conclusions contained therein concerning the adequacy of the FAA's minimum needs justification are merely biased opinions and, as such, cannot be the basis for a legal decision finding the justification to be unreasonable.

The major complaint that FAA and SBS have concerning the accuracy of the reports is that they allegedly ignored the FAA's need for "interactive processing" and, instead, focused only on the need for "batch processing." Batch processing involves the accumulation of work to be processed for a time, with periodic transmission for processing in a "batch." Interactive processing involves continuous interaction between a terminal and the central processor. According to the FAA and SBS, the report findings that FAA workload projections were not adequate justification for this procurement considered only batch processing needs, which may have been declining. Those parties assert that the reports ignored FAA's demonstration that its interactive processing workload was increasing, and that the computer systems were needed to support that requirement.

The major interactive processing need cited by the FAA and SBS involves the Aviation Safety Analysis System (ASAS). According to the FAA, the objective of ASAS is to provide timely, accurate, safety-related information to aviation standards personnel. The only means of achieving this objective is through interactive processing. The FAA claims that batch processing, which it currently uses, is too slow, costly and inaccurate to support the necessary level of access to safety-related data.

The factual findings and technical assessments of GAO audit staff are often integral to the holding of GAO bid protest decisions. See, e.g., Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181; Lockheed Propulsion Company; Thiokol Corporation, 53 Comp. Gen. 977 (1974), 74-1 CPD 339. Here, as in those cases, the bid protest decision was not based on a "best approach" suggestion of the reports, but rather was the result of an independent legal analysis applied to factual and technical assessments contained in the reports.

We admit that the reports did not focus on FAA's asserted need for interactive processing in assessing the adequacy of FAA's justification for this procurement. However, this appears to be the logical outcome of FAA's lack of knowledge of its own interactive processing needs at the time that it was justifying this procurement. For example, in FAA's lengthy response to the first GAO report, the only references to interactive processing needs are general references to an increasing number of terminals and users and to a need for a "user friendly" environment. The alleged needs are not quantified in any manner. Of particular interest is the lack of any emphasis in the record by FAA, prior to this request for reconsideration, concerning the need for interactive processing to support the ASAS system. In this regard, as part of its support for reversal of our April 22 decision, SBS commissioned a study of the issues of the case. That study concluded that in its plan for this procurement, "FAA did not provide adequate documentation in its plan in [the area of] identification of computer resource work characteristics and a workload forecast."

In summary, we find that the GAO reports contained analyses of factual matters relevant to the legal decision in this case, that the reports adequately considered the full range of information provided by FAA, and that it was proper to consider the report findings in reaching the decision in this case.

Concerning the merits of the April 22 decision, the FAA and SBS argue that the decision went beyond the GAO reports in finding that FAA was acquiring computing capacity in excess of its minimum needs. According to those parties, the reports concluded only that FAA had not identified its needs and, therefore, FAA could be purchasing too much, too little, or just the right amount of computing capacity. FAA and SBS contend that the reports did not conclude that FAA was purchasing excess computing capacity.

Contrary to FAA's assertion, our reports did find that FAA was purchasing excess computer capacity in its regional computer procurement. Our first report states, in a summary of problems with the regional computer system, that:

"--Inaccurate workload projections were used to substantiate more powerful computers than actually required or no workload analysis was performed at all."

The report also stated:

"Because the FAA headquarters RFP identified the 1978 workload to vendors and has not monitored regional batch processing workloads since 1978, it is very likely that excess batch processing capability will be procured."

Additionally, we note that FAA entitled the section of its response to our report that answered the above statements "Issue 4: Excessive Capacity Being Acquired."

Both FAA and SBS argue that our April 22 decision misapplied the legal standard for GAO review of agency determinations of minimum needs. Those parties stress that contracting agencies are granted broad discretion in defining and stating minimum needs, and GAO will not overturn such determinations unless they are unreasonable. FAA and SBS argue that since the findings of the reports are disputed by FAA and since they are not legal determinations, FAA's determination of its minimum needs is at least reasonable.

We agree that contracting agencies are granted broad discretion; however, there are limits on that discretion, and one such limit is the test of reasonableness. In our April 22 decision, we found that FAA had relied on faulty data to determine its needs and to restrict competition. We still find this to be the case whether the reports are viewed as concluding that FAA was acquiring excess capacity, or merely that FAA did not know how much capacity it needed. In either circumstance, we do not see how a minimum needs determination and statement based on incorrect or insufficient factual bases can be considered reasonable. To find otherwise in such a situation would be tantamount to nullifying the findings of our reports and abdicating legal review altogether.

Finally, concerning the recommendation of the April 22 decision, FAA and SBS have provided a detailed accounting of the financial loss to the government and the disruption to FAA's mission that would occur if the recommendation is carried out. FAA has purchased and installed the computer systems and has converted a number of critical administrative systems exclusively to these computers. FAA estimates that the direct financial loss to the government of following the recommendation will be approximately \$13 million. FAA also states that the implementation of the safety-critical ASAS, as well as other new administrative systems, will be long delayed if the recommendation is carried out. In addition, it points out that the computer systems are now being fully used. We have examined FAA's statements and documentation and find that it would not be in the government's best interest to implement the recommendation of the April 22 decision. Consequently, it is withdrawn.



Acting Comptroller General
of the United States