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

FILE: B-213459.2 **DATE:** November 2, 1984

MATTER OF: Department of the Navy--Request for Reconsideration

DIGEST:

Initial GAO decision finding an IFB amendment not material based on the "most reasonable" reading of the IFB is affirmed where the agency argues there are other reasonable interpretations of the IFB which would render the amendment material, but those interpretations are not as reasonable as the one on which GAO's decision was based; where one interpretation of an IFB stands out from all others as most reasonable, it essentially constitutes the only reasonable interpretation for purposes of GAO review.

The Department of the Navy requests reconsideration of our decision Four Seasons Maintenance, Inc., B-213459, Mar. 12, 1984, 84-1 CPD ¶ 284, sustaining a protest by Four Seasons that its bid on a Capehart housing renovation project was improperly rejected as nonresponsive based on the failure to acknowledge an amendment. We found that the amendment was not material and that the bid therefore was responsive. The Navy challenges our conclusions. We affirm our decision.

Although the IFB as originally issued did not explicitly state that the housing would be occupied during performance, it did state that:

> " . . . It is intended that disruption of use of facilities to occupants of Capehart Housing units will be held to an absolute minimum."

The Navy, believing the occupancy requirements unclear, amended the Invitation for Bids (IFB) to expressly state that "the building will be occupied during the course of the work." Four Seasons' bid failed to acknowledge this amendment and was rejected as nonresponsive based on the Navy's position that the occupancy requirement was material. We found the amendment not material because, in our opinion, the most reasonable reading of the quoted

language from the original IFB was that the housing was to be occupied during performance. The amendment merely clarified, and did not change, the contractor's obligation. Because the contract already had been awarded to another bidder, we recommended that the Navy consider the feasibility of termination to take advantage of the protester's substantially lower bid price.

Preliminarily, regarding our recommendation, the Navy reports that the work was 77 percent complete as of March, following issuance of our decision. Given this substantial performance of the contract we concur with the Navy's determination that termination of the awardee's contract for convenience would be impracticable. See Department of the Air Force--Request for Reconsideration, B-213401.2, June 19, 1984, 84-1 CPD ¶ 640.

The Navy's reconsideration request essentially is founded on its disagreement with our conclusion that the "most reasonable" reading of the original IFB language was sufficient to put bidders on notice that they would be required to work in occupied housing. The Navy claims it also would have been reasonable for bidders to read the IFB consistently with an understanding that the housing would be vacated during performance. The Navy suggests two alternate interpretations it considers reasonable: (1) the work was to be performed so as to minimize the period during which occupants would be displaced from their units; and (2) the work was to be performed with a minimum disruption of use to occupants of units adjacent to those being worked on.

We find the Navy's position does not warrant reversal of our decision. While it may be that other interpretations of the IFB language were possible, it remains our view that the interpretation that the housing would be occupied was more plausible than any other. Where one interpretation of an IFB stands out from all others as most reasonable, it essentially constitutes the only reasonable interpretation for purposes of our review.

Although the Navy claims we have made certain inferences in reaching our interpretation, the reasonableness of its alternative interpretations would depend on bidders drawing less likely inferences from the IFB

language. In order to reach the Navy's first interpretation, a bidder first would have to assume that the housing would be vacated and then read the language as implying that the work should be expedited to minimize the period of displacement. The clause speaks only of occupants, however, and includes no language regarding displacement, vacating, or expediting the work to reduce the time provided in the IFB for performance. Given the less tortured interpretation that a requirement for minimal disruption of use to occupants implies that there will be occupants, the Navy's interpretation is not a reasonable one.

The Navy's second interpretation fails for the same reason. A bidder would have to assume that the units being worked on would be vacated and then read the language as calling for minimal disruption to the only other class of occupants, occupants of adjacent units. Again, absent IFB language suggesting that the units would be vacated during performance, we think the clause reasonably can be read only as indicating that the housing units would be occupied during performance.

This is not to conclude that the IFB language did not warrant clarification; obviously, the language was not as clear as it could have been. Nevertheless, as stated in our decision, an amendment which merely clarifies a requirement already evident in the solicitation will not be deemed material. See Microform, Inc., B-208117, Dec. 28, 1982, 82-2 CPD 582.

Aside from our interpretation of the occupancy requirement, moreover, we believe section 13 of the IFB's General Provisions adequately dealt with the occupancy requirement by requiring bidders to ascertain "the general and local conditions which can affect the work or the cost thereof." Occupancy during performance, in our view, was a condition which would have fallen under this section had the amendment in question not been issued. We do not

believe the burden on bidders to determine whether the housing would be occupied was so substantial or difficult a task to satisfy that an amendment in effect shifting that burden to the Navy should be considered material.

Our decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States