

**February 18, 1994**

**P.S. Protest No. 93-23**

## **CABLETRON SYSTEMS, INC.**

**Solicitation No. 104230-92-A-0029**

### **DIGEST**

Request for reconsideration is denied where protester does not present newly-discovered evidence and does not demonstrate errors of law or failures to consider essential information previously provided.

### **ON RECONSIDERATION**

Cabletron Systems, Inc., (Cabletron) requests reconsideration of the decision dismissing in part and denying in part its protest of the award of a contract for Local Area Network (LAN) components to I-Net, Inc., rather than to itself.

The decision summarized Cabletron's protest as follows:

Cabletron's main point of protest has to do with the comparative evaluation of its and I-Net's sample configurations. Its objection takes two parts. First, Cabletron complains that although it was never informed that its original component lists were not in compliance with the solicitation, in its [best and final offer (BAFO)] it was asked to price additional components not initially included in its priced configurations, and that those components were fancier (in its terms, "more feature rich") and thus more expensive than those it originally priced. Second, Cabletron complains that I-Net was not asked to price similarly feature-rich components, allowing it to offer lower prices but preventing the fair comparison of the two offers.

*Cabletron Systems, Inc.*, P.S. Protest No. 93-23, December 23, 1993, at 5-6. (Footnote omitted.)

The decision concluded that Cabletron lacked standing to challenge the Postal Service's designation of I-Net equipment to be priced because even if its challenge were resolved in its favor, it would not be in line to receive the award because there was an intervening offer which Cabletron had not challenged. Further, the decision concluded that Cabletron's protest concerning the Postal Service's designation of Cabletron's equipment to be priced was untimely, since it should have been made before Cabletron submitted its BAFO.

The decision determined, however, that another element of the protest was timely raised:

Cabletron's objection that the Postal Service treated it and I-Net disparately with respect to the selection of components to be priced is timely raised. . . . This issue differs from the separate contentions . . . that I-Net's evaluated components were understated, or that Cabletron's evaluated components were overstated. The combined contention that different standards were applied to the two offers to I-Net's benefit and Cabletron's detriment is timely, and Cabletron has standing to raise it because, if it is correct, it could alter Cabletron's standing for award.

*Id.* at 19.

The decision then summarized the contracting officer's explanation how the evaluators selected the several offerors' components to be priced, striving "to establish a common baseline." The decision concluded that Cabletron had not met its burden of proof to the contrary:

While it may be that the components selected for it to price were more feature-rich than the components selected for I-Net to price, [Cabletron] has not established that the components were selected inconsistently for the two offerors. Rather, it appears that the feature richness of its components was solely the result of the characteristics of the products which it offered.

*Id.* at 20.

The decision concluded that with respect to the substitution of multimedia hubs, the components to which most of Cabletron's argument was directed:

Both offerors were asked to price their smallest multi-segmented backbone capable models. While Cabletron and I-Net disagree whether the hub specified for Cabletron was more than capable, the issue is moot, since Cabletron has not suggested an alternative configuration more attractive to it which could have met the requirement within the components which it proposed."

*Id.*

Cabletron now requests that we reconsider or clarify the decision, raising the following points:

-- The requirement for multi-segmented backbone capable models was not established by the solicitation and was first stated after award, precluding Cabletron from offering its best price.<sup>1</sup> The decision is incorrect in asserting that both Cabletron and I-Net "were asked to price their smallest multi-segmented backbone capable" hubs because Cabletron's less feature-rich eight-slot hub could provide this capability as well as the more feature-rich five-slot hub it was required to price.

-- The decision overlooks the fact that there were forty-four other instances in which Cabletron was required to price more expensive components than were needed to meet the minimum needs stated in the RFP.

-- The determination not to include the cost of ISA bus NIC cards in the price evaluation was made after I-Net's price was known, and Cabletron protested that determination as soon as it became aware of it.

-- The decision improperly concluded that Cabletron's protest against the unbalance of I-Net's offer with respect to the initial term and the option terms was untimely.

The contracting officer and I-Net submitted comments on the protester's request which suggest that the request does not meet the standards for reconsideration and should be denied.<sup>2</sup>

## **DISCUSSION**

We note initially that our review of requests for reconsideration is limited.

The standard for our review of reconsideration requests is very narrow. PM 4.5.7 n. states that a "request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered." Further, the controlling decision on this standard of review states:

Information not previously considered refers to that which a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest. Reconsideration is not appropriate where the protester simply wishes us to draw from

<sup>1</sup> In a rhetorical flourish, the protester contends that the procedures to which it objected "directly harmed the American taxpayers. . . ." This contention reflects a common misunderstanding of the manner in which the Postal Service is funded; in fiscal year 1993, appropriated "taxpayer funds" totaled only \$160 million, about a third of one percent of the Postal Service's \$47.6 billion operating revenues received from postal ratepayers. *Comprehensive Statement on Postal Operations, 1993*, Tables 5 and 7.

<sup>2</sup> The contracting officer took particular exception to portions of the request which appeared to question her integrity with regard to the ISA Bus NIC card pricing issue. In response, the protester has apologized and disclaimed any intention to allege bad faith.

the arguments and facts considered in the original protest conclusions different from those we reached in that decision. Reassertion of arguments previously considered and rejected by this office does not constitute a ground for reconsideration. Similarly, where information and arguments were known or available to the protester during the development of its protest but were not presented in the original proceeding, such information and arguments may not be considered in a request for reconsideration.

*Federal Properties of R.I., Inc., On Reconsideration*, P.S. Protest No. 93-02, July 9, 1993, quoting *Fort Lincoln New Town Corporation, On Reconsideration*, P.S. Protest No. 83-53, November 21, 1983 (citations omitted).

Measured against this standard, the protester's submission provides no basis for reconsideration. Its contentions are no more than reiterations of points previously raised or attempts to reinforce those points, after the fact, with new contentions which could have been raised in the initial protest.

Cabletron's first contention, that the requirement for multi-segmented backbone capable hubs was not stated in the solicitation, was an issue raised in the protest but not resolved because it was untimely raised. Its contentions that it should have been allowed to price a less costly hub or less costly alternative to the other forty-four components of which it complains should also have been raised before its BAFO was due. *Cabletron*, at 19.

The protester has not provided any information which suggests that it was not asked to price its smallest multi-segmented backbone capable hubs. Its contention to the contrary has two flaws; it requires the conclusion that an eight-slot hub is smaller than a five-slot hub, and it overlooks the fact that the eight-slot hub can be given its multi-segmented capability by the use of an upgrade kit not included in Cabletron's proposal. As the decision noted, the contracting officer explained that the criteria by which hubs were to be selected included the requirement that a hub be capable of being "activated" as a multi-segmented backbone hub by the use of components included in the offer.

Contrary to Cabletron's contention that it learned only after contract award that the ISA bus NIC cards were not to be priced, that fact was inherent in the terms of Amendment A02, which substituted new pricing instructions for the pricing instructions in the solicitation.<sup>3</sup> The omission of pricing for the cards from Amendment A02 changed the solicitation and "modified the requirements for the components offerors were to price." *Id.* at 19. A protest against that change similarly must have been made before BAFOs to be timely.

Cabletron's final contention, that the decision improperly found its initial challenge to I-Net's unbalanced offer untimely, is factually incorrect. The protester's protest contended that I-Net's offer was unbalanced between the first year and the option years. *Cabletron* at 5. In

<sup>3</sup> Although section M.4.2 of the March 3 solicitation had provided that in evaluating prices, "[t]he USPS will . . . assume the purchase of 2,500 ISA busNICs each year," the individual configurations distributed to the offerors with Amendment A02 made no provision for pricing any quantity of ISA busNICs.

subsequent comments, Cabletron raised a new contention that I-Net's offer was unbalanced between its priced components and its unpriced "market basket" components. *Id.* at 11. The decision concluded that the protester lacked standing to challenge any imbalance in I-Net's offer because Cabletron was not next in line for the award (*Id.* at 18), and further concluded that its challenge to the imbalance between I-Net's prices for priced and unpriced items was untimely. *Id.* at 19.

The request for reconsideration is denied.

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Contract Protests and Policies