

Protest of) Date: January 17, 1991
C.R. DANIELS, INC.)
Solicitation No. 104230-90-A-0100) P.S. Protest No. 90-62

ON RECONSIDERATION

C.R. Daniels, Inc. has timely filed a request for reconsideration of our December 21, 1990 decision which denied its protest. In its protest, C.R. Daniels alleged that the awardee, D.V. Industries, planned to furnish hampers under the contract manufactured, in part, by Federal Prison Industries, Inc. ("UNICOR"), contrary to federal statute and the requirements of the solicitation.

In our decision, we characterized C.R. Daniels' challenge of D.V. Industries' choice of subcontractor as a challenge against the affirmative determination of the awardee's responsibility. We declined to overturn that determination since the protest lacked allegations of fraud and we found no abuse of discretion. We also held that C.R. Daniels' argument that D.V. Industries did not comply with the solicitation requirements was without merit since the requirements the protester alleged that the awardee did not meet were provisions applicable to the contract and not to the solicitation.

In its request for reconsideration, C.R. Daniels argues that this office incorrectly cast its protest as one against the awardee's affirmative responsibility determination, adding that it instead questioned D.V. Industries' responsiveness^{1/} to certain solicitation provisions. The protester continues by contending that since the decision did not discuss whether the contracting officer made the affirmative responsibility determination concerning the legality of using UNICOR as a subcontractor prior to contract award, it will assume that she could not and did not do so.

C.R. Daniels further asserts that the portion of our original decision which stated that the contracting officer made that determination is erroneous as a matter of fact and is

^{1/}We take it that the protester uses this term in its colloquial, rather than its technical sense. "As the Postal Service Procurement Manual (PM) makes clear, all postal solicitations are now conducted on a negotiated basis; as such, proposals are evaluated to determine technical acceptability or unacceptability. See PM 4.1.4. 'Responsiveness' and 'nonresponsiveness,' relevant to sealed-bid solicitations, are no longer proper terms to use in evaluating proposals under Postal Service procurements." TLT Construction Corp., Inc., P.S. Protest No. 89-75, January 18, 1990.

unsupported by the record. Finally, the protester reads our decision to conclude that the question of UNICOR's subcontracting authority is beyond the scope of our bid protest jurisdiction, and challenges that conclusion.^{1/}

Procurement Manual ("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." Moreover, "[r]econsideration is not appropriate where the protester simply wishes us to draw from the argument and facts considered in the original protest decision conclusions different from those reached in that decision." Applied Copy Technology, Inc., On Reconsideration, P.S. Protest No. 89-62, November 7, 1989.

C.R. Daniels has offered no new information not previously considered, nor has it alleged legal error. Instead, the protester supplies an "error of fact" argument which is not a basis for a request for reconsideration.^{1/}

The request for reconsideration is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 6/24/93]

^{2/}Nothing in the previous decision supports C.R.Daniels' reading in this regard, since the decision did not undertake to deny or dismiss the protest on jurisdictional grounds. We stand by our previous suggestion, however, that the protester's concerns in this regard might well be resolved more definitively in another forum.

^{3/}In any event, the protester's assertion is incorrect. The contracting officer's statement recites that she knew about D.V. Industries' proposed use of UNICOR as a subcontractor prior to the award and did not interpret it as a violation of federal statute.