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**DECISION**



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

**FILE: B-186983**

**DATE: March 9, 1977**

**MATTER OF: Comten, Inc. - Request for Reconsideration**

**DIGEST:**

1. Prior decision upholding propriety of request for proposals and refusing to consider agency's alleged failure to adhere to Executive Branch policies is affirmed since request for reconsideration does not establish that decision contained factual errors or mistakes of law.
2. GAO, in accordance with its statutory duty to pass upon legality of expenditures of public funds, considers agency adherence to statutes and implementing regulations, but is without authority to require adherence to Executive Branch or department policies.

Comten, Inc. (Comten) requests reconsideration of our decision in the matter of Comten, Inc., B-186983, December 8, 1976, 76-2 CPD 486, in which we denied its protest against request for proposals (RFP) No. DAAB09-76-R-0016, issued by the U.S. Army Electronics Command for 64 programmable communications controllers and ancillary items. Comten alleged that the RFP was defective and therefore should have been either cancelled or amended to cure the defects. After considering Comten's contentions that the RFP (1) was restrictive of competition because of its lack of specificity, (2) improperly contemplated the award of a fixed price contract, (3) was invalid due to the Army's failure to obtain the necessary delegation of authority from the General Services Administration (GSA) to conduct the procurement, and (4) was contrary to the policies contained in Federal Management Circular (FMC) 74-5 and Bureau of the Budget (BOB) Circular A-61, we concluded that the RFP was not contrary to applicable law and regulations.

Comten now contends that our decision is, in many respects, erroneous in law and fact. Specifically, Comten (1) challenges our acceptance of the Army's statement made in support of its position that a firm fixed priced contract was appropriate for this procurement, that 80 models of communications controllers are currently available on the market; (2) disagrees with our conclusion that the specifications were sufficiently definite to permit effective competition; (3) objects to our reliance on GSA's stated position with respect to the sufficiency of the delegation of authority it gave the Army for the procurement, and (4) cites a

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Federal court case to support its assertion that we should have considered the Army's alleged failure to comply with the Circulars referred to above.

We find nothing in Comten's request for reconsideration which would warrant modification or reversal of our decision. Our acceptance of the Army's position regarding the availability of communications controllers was not, as stated by Comten, "in contradiction of the evidence contained in the record," but rather was based on the record which, in addition to the Army's statements, contained only Comten's unproven assertions to the contrary. Our refusal to consider the alleged violations of FMC Circular 74-5 and BQB Circular A-61--which represent only Executive Branch policy as opposed to law or regulation having the force and effect of law--was based on our long-standing position that such matters are not within the bid protest decision functions of this Office. See, e.g., Kasper Brothers, B-188276, February 8, 1977, 77-1 CPD \_\_\_\_\_. Comten now cites N.L.R.B. v. Welcome-America Fertilizer Company, 443 F. 2d 19 (9th Cir. 1971), for the proposition that agencies have a duty to follow their own guidelines, and that our "failure to consider the Army's violations of these Circulars' provisions is \* \* \* erroneous as a matter of law \* \* \* [and] \* \* \* represents an abdication of the protective role which the protest procedures were designed to fulfill."

Comten, however, overlooks the fact that our consideration of bid protests is predicated on our statutory duty to pass upon the legality of the expenditure of public funds, see 31 U.S.C. §71, 74 (1970). As such, we consider adherence to procurement policies which are prescribed by law and implementing regulations; we do not, however, generally have "authority to require adherence to departmental policies in specific procurements or to hold invalid contracts which may have been awarded in derogation of such policies." 43 Comp. Gen. 217, 221 (1963). Such matters are for consideration by the Executive Branch or department concerned. General DataComm Industries, Inc., B-182556, April 9, 1975, 75-1 CPD 218. Furthermore, in the case cited by Comten, the court, because of the jurisdictional nature of the National Labor Relations Board guidelines involved, regarded them as in effect creating a substantive right in those who would seek to seek or avoid the jurisdiction of the Board. We regard the provisions of the Circulars as internal Executive Branch guidance and not as creating any substantive rights in offerors. See Kirschner Research Institute, et al., B-186489, B-186492, September 27, 1976, 76-2 CPD 289.

The remainder of Comten's contentions appear to be reiterations of contentions made and considered prior to issuance of the December 8, 1976 decision. In effect, Comten is merely expressing

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disagreement with our conclusions, and is not, as required by 4 C.F.R. § 20.9(a) (1976), "specifying any errors of law made or information not previously considered." This does not provide an adequate basis for us to further reconsider the prior decision. See Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 972 (1976), 76-1 CPD 240; Lite Industries - Reconsideration, B-184403, July 29, 1976, 76-2 CPD 91; Datawest Corporation - request for reconsideration, B-180919, April 16, 1975, 75-1 CPD 228.

The prior decision is affirmed.

  
Acting Comptroller General  
of the United States