DECISION

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

FILE: B-215399.3 **DATE:** March 11, 1985

MATTER OF: REMAC Information Corporation--Reconsideration

DIGEST:

Neither the fact that the contractor did not itself induce the error for which corrective action was recommended in a prior decision, nor the need to recover costs that the contractor did not make allowance for in its base year price, provides a basis for GAO to modify its recommendation that contract renewal options not be exercised. Procurement errors must be remedied if the integrity of the competitive process is to be maintained.

REMAC Information Corporation requests reconsideration of our decision in Automated Datatron, Inc.; California Image Media, Inc., B-215399 et al., Dec. 26, 1984, 84-2 CPD ¶ 700. In that decision, we sustained California Image Media's (CIM's) protest under request for proposals (RFP) No. 263-84-P-(83)-0033, issued by the Department of Health and Human Services (HHS) for microfilming services. We concluded that HHS improperly evaluated CIM's sample microfiche and recommended that the agency not exercise its option to renew the contract awarded to REMAC.

We affirm our prior decision.

REMAC contends that our recommendation that the contract renewal option not be exercised is unfair and prejudicial to REMAC. REMAC also argues that we improperly assumed that CIM would have received the full 100 points available for its microfiche sample, if it had been properly evaluated.

Regarding our recommendation, the protester states that it invested in new equipment and incurred start-up costs in the expectation that the annual renewal options would be exercised. REMAC states that it is a small business and will face financial hardship if the contract is not extended. REMAC recognizes that offerors assume the risk that the government will not exercise an option to extend the term of a contract, but asserts that in this case, it reasonably believed that the options would be exercised based on its experience with government contracts and HHS's projected need for microfilming services.

In essence, REMAC is arguing that the government should exercise the contract renewal options because REMAC was not responsible for the government's evaluation error and will be unable to recover its equipment and start-up costs otherwise. We have found that neither the fact that the contractor did not itself induce the error for which corrective action is recommended, nor the need to recover costs that the contractor did not make allowance for in its base year price, provides a proper basis for option exercise. See A. J. Fowler Corp.--Second Request for Reconsideration, 61 Comp. Gen. 238 (1982), 82-1 CPD ¶ 102; A. J. Fowler Corp.--Request for Reconsideration, B-200718.2, Sept. 29, 1981, 81-2 CPD ¶ 260.

Further, in our decision, we concluded that the elimination of CIM from the competition on the basis of a single questionable deficiency in its sample microfiche was improper, particularly since it left only REMAC's more expensive proposal in the competitive range. Thus, the award to REMAC raised a serious question as to the adequacy of the competition obtained by the agency. In our view, such procurement errors must be remedied if the integrity of the competitive process is to be maintained, and nonexercise of a contract renewal option is an appropriate means of accomplishing this purpose. See Charta, Inc. -- Reconsideration, B-208670.2 et al., July 12, 1983, 83-2 CPD ¶ 79.

REMAC also asserts that requiring a recompetition is unfair because the agency released its proposal to a competitor under the Freedom of Information Act. REMAC contends that this puts it at a grave disadvantage in what should be an unbiased and equal competition. We find,

however, that the importance of correcting the procurement deficiency in this case outweighs any competitive advantage which may have been gained from the release of REMAC's proposal. See Harris Corp., B-204827, Mar. 23, 1982, 82-1 CPD ¶ 274.

REMAC argues that we erroneously assumed that CIM would have received the full 100 points available for the sample microfiche evaluation criterion if the agency's evaluation had been proper. We find no error in our decision.

HHS gave CIM a score of zero for its sample microfiche and found CIM's proposal unacceptable because all documents were not filmed in the proper order (a divider between two sets of documents was misplaced). In doing so, the agency relied on a solicitation provision which stated that any microfiche sample that did not meet the technical specifications for "resolution, density, uniformity of density, archival quality etc." would not be further considered.

We found that the evidence in the record suggested that the documents actually were filmed in the order they were in when CIM received them. As previously noted, we also found that even assuming that a divider was out of sequence in CIM's sample microfiche, this did not justify eliminating CIM from the competitive range, especially since it resulted in a competitive range of one more expensive proposal.

Our decision did not assume that CIM would have received a perfect score for its sample microfiche if it had not been penalized for the allegedly out of sequence documents. Rather, we concluded that CIM's proposal should not have been excluded from the competition on the basis of a relatively minor deficiency in its sample microfiche. Of course, it is implicit in our conclusion that but for the improper evaluation, CIM's score would have been sufficient for inclusion in the competitive range. We think this assumption was fully justified by the record since in

fact, the only deficiency the evaluators identified in CIM's sample microfiche was that documents were allegedly filmed out of sequence.

Our prior decision is affirmed.

Milton J. Socolar

For Comptroller General
of the United States