

DOCUMENT RESUME

08123 - [C3388467]

[Request for Reconsideration of Denial of Protest against Award of Subcontract]. B-192196. November 30, 1978. 3 pp.

Decision re: Burn Construction Co., Inc.; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel; Procurement Law I.
Organization Concerned: National Science Foundation; Associated Universities, Inc.

Authority: 4 C.F.R. 20. B-190720 (1978).

A company requested reconsideration of a decision denying its protest against award of a subcontract. The decision, which held that the low bid was nonresponsive for failure to comply with a subcontractor listing requirement in the solicitation, was affirmed since the requester failed to demonstrate error or information not previously considered.
(HTP)

DECISION

8467

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

FILE: B-192196

DATE: November 30, 1978

MATTER OF: Burn Construction Company, Inc. -
Request for Reconsideration

DIGEST:

Prior decision holding that low bid which listed alternate subcontractors under one category of work was nonresponsive for failing to comply with mandatory invitation subcontractor listing requirement is affirmed where request for reconsideration makes no showing of erroneous legal conclusions or information not previously considered.

Burn Construction Company, Inc. (Burn), requests reconsideration of our decision in Burn Construction Company, Inc., B-192196, August 21, 1978, 78-2 CPD 139, wherein we denied its protest against the award of a subcontract to another bidder by Associated Universities, Inc. (AUI), a prime contractor to the National Science Foundation (NSF) for the management, operation and maintenance of the National Radio Astronomy Observatory (NRAO), a Government facility.

In our decision, we held that Burn's low bid was properly rejected as nonresponsive for failing to comply with the subcontractor listing requirements by listing alternate subcontractors under one category of work, thereby affording the firm an opportunity to select after bid opening which of the two firms listed would perform the work. The IFB required that only one subcontractor be listed for each classification of work and that the subcontractors listed would be those performing the work. We stated that the subcontractor listing requirement is intended to preclude postaward "bid shopping" and that failure of a bid to comply with the listing provision is a material deviation rendering the bid nonresponsive and that such deviation may not be remedied after bid opening. The only issue for consideration on the merits

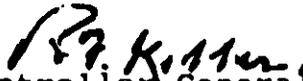
in Burn's protest was whether Burn's bid as submitted was responsive to the IFB requirements.

Referring principally to matters outside the language of the IFB, Burn states that our decision is based upon the erroneous belief that the subcontractor listing requirement included in the IFB was intended to prevent bid shopping. Rather, the subcontractor listing was designed to obtain information about prospective subcontractors and there was no intention that a bid which failed to meet the letter of the listing requirements would be rejected as nonresponsive. Burn further states that oral advice had been given that other subcontractors could be utilized in place of listed subcontractors. Also, Burn states that essentially AUI was concerned about the qualifications of the subcontractors who would be employed to perform the work. Under these circumstances, Burn contends that the subcontractor listing requirements could not have been intended to preclude postaward bid shopping.

The matters raised in Burn's request for reconsideration are basically restatements of the arguments raised in its initial bid protest. They were fully considered by our Office in reviewing the record on the protest as indicated in our decision. Based upon the record, we again find no basis which would cause us to change our prior decision. The subcontractor listing requirement contained in the IFB specifically required that only one subcontractor be listed for each category of work and mandated the submission of this information with the bid. Further, by letter of September 18, 1978, to our Office, the NRAC stated that AUI did intend to preclude postaward bid shopping as evidenced by the language of the IFB. The above supports our prior view that the subcontractor listing requirement was intended to preclude postaward bid shopping and that Burn's failure to comply with the provisions rendered its bid nonresponsive.

With regard to Burn's contention concerning oral advice that other subcontractors could be utilized in place of listed subcontractors, even if such an oral statement had been made, we have held that bidder's rely upon such oral statements at their own risk. See A.L. Leftheriotis Ltd., B-190720, March 30, 1978, 78-1 CPD 251, and decisions cited therein.

We consider that Burn has failed to demonstrate any error of law or information not previously considered. See section 20.9 of our Bid Protest Procedures, 4 C.F.R. part 20 (1978). Accordingly, our decision is affirmed.


Deputy Comptroller General
of the United States