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DECISION



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

FILE: B-202966.2

DATE: February 16, 1982

MATTER OF: B&M Marine Repairs, Inc. -- Request for Reconsideration

DIGEST:

1. Requirement in GAO Bid Protest Procedures that requests for reconsideration specify errors of law or information not previously considered refers to information which may have been overlooked by GAO or which was not available during pendency of protest, rather than to information which party seeking review had opportunity to submit but failed to do so.
2. Interested parties who withhold or fail to submit all relevant information to GAO, assuming that contracting agency will adequately state their position or that GAO will draw conclusions favorable to them, do so at own risk, since it is not GAO's function to prepare defenses to allegations clearly raised.
3. When protest involves unbalanced bid prices as of opening date, GAO will not consider data regarding quantities ordered from bidder or materials introduced into bidder's inventory after opening.

B&M Marine Repairs, Inc. requests reconsideration of our decision on the protest of TWI Incorporated, B-202966, November 14, 1981, 61 Comp. Gen. ____, 81-2 CPD 424, involving a solicitation for repair of watertight closures aboard ships.

In that decision, we found that B&M's low bid was mathematically unbalanced because each of the 48 line items, representing a mix of labor and materials, did not appear to carry its share of work plus profit. Since the Naval Supply Center, Norfolk, Virginia, which had issued the solicitation, had only one year's data on which to base quantity estimates and had included a factor for "unforeseen growth," we concluded that the

estimates were not accurate enough to insure that acceptance of B&M's bid actually would result in the lowest cost to the Government. We therefore recommended that the bid be rejected and award made to the next-lowest bidder who had submitted a mathematically balanced bid.

B&M, the incumbent contractor, now has submitted extremely detailed information in support of its bid prices and has attempted to explain any disparities between the Navy's estimates and its own records of quantities ordered during the first contract year. The firm argues that our recommendation should be modified or overturned. For the following reasons, we deny the request for reconsideration.

Our Bid Protest Procedures, 4 C.F.R. 21.9 (1981), require that requests for reconsideration contain a detailed statement of the factual and legal grounds for such action. In addition, a request must specify any errors of law made or information not previously considered by our Office.

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; additional facts obtained under a Freedom of Information Act request are an example of the latter. Any other interpretation would permit a protester, an agency, or an interested party to present information to our Office piecemeal, disrupting a procurement for an indefinite time. The Navy in this case has refused to act on our recommendation until we have reconsidered, thus demonstrating the potential for delay. B&M's contract has been extended in the interim.

In our opinion, B&M has not met the criteria for reconsideration. For the most part, there is nothing in its very detailed request which it could not have presented for our initial consideration if B&M chose to do so; a review of the chronology of the protest confirms this. Bid opening was April 15, 1981; TWI's protest, dated the same day, was received in our Office on April 20. As an interested party, B&M was provided with copies of TWI's submissions and the Navy's reports to our Office and was invited to comment on them, which it did on July 20 and August 8. In each case, B&M responded in very general terms, reaffirming its bid prices and stating that they represented fair market value.

With regard to allegations of unbalancing, particularly of the first nine line items, which were labor intensive and, according to TWI, were overstated because they accounted for

74 percent of B&M's total bid price, the firm merely stated that it provided wages and benefits comparable to or better than other contractors in its locality. In addition, B&M noted that, in setting its bid prices, it had considered the various types, sizes, and location aboard ships of the doors, hatches, and other closures which were to be repaired, as well as the uncertain nature of actual repairs prior to issuance of delivery orders and the need to follow quality assurance procedures.

In its request for reconsideration, B&M lists quantities of each line item which the Navy ordered from it, not only during the first contract year but also between June and November 1981. B&M has used these figures to project quantities which it expects will be ordered through May 1982 and has compared them with the Navy's estimates. It also has submitted a chart showing the value of its monthly inventory, which increased from \$25,000 in October 1980 to more than \$96,000 in November 1981.

In addition, B&M shows how it arrived at its cost estimate for line item 14AA, knife edge repairs, one of the examples of probable unbalancing given in our decision. Our analysis showed that for 1,200 linear feet, B&M bid a unit price of \$.50 a foot, or \$600 extended, while TWI bid \$10 a foot, or \$12,000 extended. B&M states that its bid price was based on a cost of \$.35 a foot for labor and \$.15 a foot for stainless steel rods; it has provided us with a supplier's quote for these rods. B&M has offered to supply manhour and materiel costs to support its other bid prices during a GAO conference.

It is clear that the figures on quantities ordered under B&M's current contract were available at the time we were considering TWI's protest, but they were not included in the record. As we have previously stated, interested parties who withhold or fail to submit all relevant evidence to our Office, expecting that the contracting agency will adequately represent their position or that we will draw conclusions favorable to them, do so at their own risk. It is not our function to prepare defenses to allegations clearly raised, but rather to base our decision on the written record before us.

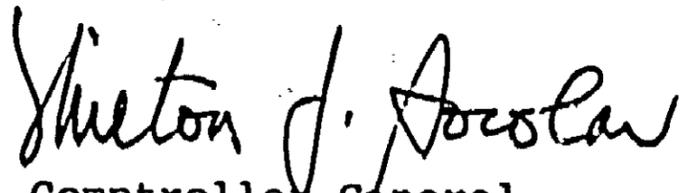
Interscience Systems, Inc., Cencom Systems, Inc. - Reconsideration, 59 Comp. Gen. 658 (1980), 80-2 CPD 106.

Our decision, which we believe was correct when it was made, was based on a careful examination of prices submitted by six different bidders on all line items

for both initial and option years. B&M has not shown that we misunderstood the facts then known or misapplied them to the applicable provisions of law. See Decision Sciences Corporation, B-188454, December 21, 1977, 77-2 CPD 485.

Finally, since the protest involved B&M's unbalanced bid prices as of the April 15, 1981 opening date, we do not believe it relevant or appropriate to consider data with regard to quantities ordered by the Navy or materials introduced into B&M's inventory after that date.

The request for reconsideration is denied.

for 
Comptroller General
of the United States