

DECISION

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

FILE: B-218267.2 **DATE:** March 25, 1985

MATTER OF: Spectrum Leasing Corporation--
Request for Reconsideration

DIGEST:

1. In reviewing the propriety of procurement actions by contracting agencies, GAO addresses issues that remain in material dispute, and does not consider issues that have become moot or otherwise irrelevant to GAO's legal decision in the matter.
2. A protester may not successfully advance a new argument in a reconsideration request that it could and should have advanced in its original protest, as GAO's Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues.

Spectrum Leasing Corporation requests reconsideration of our decision, Spectrum Leasing Corp., B-216615, Feb. 19, 1985, 85-1 CPD ¶ ____, in which we sustained Spectrum's protest against the award of an indefinite quantity contract for microcomputer systems and related peripheral components to ISYX, Inc., the fourth low bidder, under invitation for bids (IFB) No. NA-84-IFB-00143, issued by the Department of Commerce. The agency had rejected Spectrum's third low bid as nonresponsive because the firm had inserted "N/C" (no charge) notations for certain contract line items, in apparent derogation of an IFB provision which required bidders to provide dollar costs for these items. We agreed with Spectrum that the rejection was improper and sustained the protest.

In view of prior decisions of this Office on similar facts, we concluded that bids which contain "N/C" or similar notations instead of dollar prices are responsive because such notations clearly equate with zero dollar costs, and thereby indicate the bidder's affirmative intent to obligate itself to provide the items at no

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charge to the government. Accordingly, we recommended to the Secretary of Commerce that the government's option to extend the term of the present contract with ISYX not be exercised, and that any future requirements be resolicited.

Spectrum requests reconsideration of our prior decision on the grounds that: (1) the decision fails to indicate that the agency had also rejected Spectrum's bid initially because the firm had failed to submit technical literature with its bid, but that the agency later withdrew this as a ground for rejection; and (2) our recommendation for corrective action is inadequate since Spectrum was entitled to the contract award from the outset as the remaining low, responsive bidder. We affirm our prior decision.

In reviewing the propriety of procurement actions, this Office addresses issues that remain in dispute, and does not consider issues that have become moot or otherwise irrelevant to our legal decision in the matter. See, e.g., DANTEC Electronics, Inc., B-213247, Aug. 27, 1984, 84-2 CPD ¶ 224. Here, in its administrative report on the protest, the agency withdrew its original position that the IFB required the submission of technical literature, thus conceding that Spectrum's contrary view was correct. We did not address the issue in our prior decision because it had become moot.

As to Spectrum's second argument, Spectrum asserts that it was the remaining low, responsive bidder because the apparent low and second low bids were in fact non-responsive. We indicated in our prior decision that the apparent low bid had been rejected for essentially the same reason as Spectrum's, in that the bidder had inserted "NSP" (not separately priced) notations for several items. The apparent second low bid was rejected because the bidder had failed to submit a bid on all items, that is, had left blank several spaces to insert a price. (We agree with Spectrum's position regarding the nonresponsiveness of the apparent second low bid, and the matter need not be considered further.) With regard to the apparent low bid, Spectrum contends that the low bid was also nonresponsive because certain items of equipment offered by that bidder did not conform to material specification requirements of the IFB. As evidence of this, Spectrum has furnished us

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with a copy of a letter it sent to the contracting officer shortly after bids were opened asserting such nonconformity.

A protester may not successfully advance a new argument in a reconsideration request that it could and should have advanced in its original protest, as our Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues. See Wing Manufacturing et al.--Request for Reconsideration, B-213046.3 et al., Aug. 17, 1984, 84-2 CPD ¶ 187. Spectrum never asserted in any of its submissions to this Office during our resolution of the original protest that the apparent low bid was nonresponsive because of this alleged equipment nonconformity, and we note that the letter it now offers in evidence thereof is dated 3 weeks prior to the date of its initial letter of protest. Clearly, Spectrum was aware of the issue at that time and cannot successfully raise it at this point several months after filing the protest.

In any event, the fact that Spectrum may have asserted to the contracting officer that the apparent low bid should be found nonresponsive because of nonconformity with the specifications does not establish that certain items of equipment offered by that bidder were in fact nonconforming. There is nothing in the record here to indicate that the agency concurred with, or even acted upon, Spectrum's assertion.

The agency's administrative report on the protest only stated that the apparent low bid was rejected because the bidder had inserted "NSP" notations instead of dollar costs. Therefore, in recommending corrective action, we considered the fact that the apparent low bid, like Spectrum's, most probably should not have been rejected for inserting such notations. Accordingly, we did not believe that it would be appropriate to recommend that ISYX's contract be terminated for the convenience of the government and the remainder of the agency's requirements be awarded to Spectrum, since Spectrum had not reasonably established its entitlement to the original contract award. Instead, since the agency had informed us that no further delivery orders to ISYX were then presently contemplated during the initial term of the contract, we

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believed the appropriate remedy would be for the government not to exercise its option to extend the term of ISYX's contract, and to resolicit any future requirements. We remain of that opinion.

The decision is affirmed.

for *Navy R. Van Cleave*
Comptroller General
of the United States