



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Genesis General Contracting, Inc.-- Reconsideration

File: B-225794.2

Date: September 14, 1987

DIGEST

Reconsideration request which reiterates arguments made during consideration of original protest and is based on new argument untimely raised fails to establish any error of fact or law which warrants reversal of original decision.

DECISION

Genesis General Contracting, Inc., requests reconsideration of our decision, Genesis General Contracting, Inc., B-225794, June 1, 1987, 87-2 C.P.D. ¶ 550, denying the firm's protest that the Air Force should not have rejected its bid as nonresponsive. We deny the request for reconsideration.

We denied Genesis' protest based on our finding that rejection of its bid as nonresponsive was proper. We found that the IFB's warranty requirement was a matter of bid responsiveness because it involved a performance commitment, i.e., to install a roofing system for which the manufacturer would issue a 10-year warranty for labor and materials. Thus, the bidder's intention to do so must be established at the time of bid opening, and must be unequivocal. Here, we found that Genesis took exception to the terms of the warranty and failed to submit evidence with its bid that it could furnish the required warranty.

Most of Genesis' request for reconsideration is a reiteration of arguments it had previously made. Genesis also now states that it "has been notified by the contracting officer" that award would be made to the eighth low bidder. The protester contends that the fact that "the first seven low bidders were declared nonresponsive for similar reasons," is an indication that the bid package was "confusing and defective."

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In order to prevail in a request for reconsideration, the requester must show that our decision was founded on errors of fact or law. See 4 C.F.R. § 21.12(a) (1987); C&L Diversified Enterprises, Inc.--Request for Reconsideration, B-224912.2, Mar. 10, 1987, 87-1 C.P.D. ¶ 268. Genesis has not met this standard by reiterating arguments previously considered.

In addition, Genesis' position that the solicitation was confusing and therefore defective, as evidenced by the rejection of other bids as nonresponsive, is untimely. Even assuming, for purposes of argument, that such an assertion need not have been made prior to bid opening, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) because it was an alleged defect in the solicitation, we note that in her statement accompanying the contracting agency's report filed with our Office on April 10, 1987, the contracting officer advised that ". . . eight [bids], including the three low bids, were rejected as nonresponsive for failure to comply with this essential [warranty] requirement." A protest that the solicitation was defective, based on this information, filed approximately 2 months after it was made available to the protester and the original protest had been resolved, is untimely and will not be considered. See 4 C.F.R. § 21.2(a)(2).

As our original decision made clear, we examined the Air Force's decision to reject Genesis as nonresponsive and concluded that it was reasonable since Genesis had not met a material requirement of the IFB and its failure to do so could not be waived or corrected after bid opening. Since Genesis has offered no evidence to show that our conclusion was in error, its request for reconsideration is denied.

for *Seymour Efas*
Harry R. Van Cleve
General Counsel