

Fannelli



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paulsen Construction Co.--Reconsideration

File: B-231393.2

Date: January 24, 1989

DIGEST

Request for reconsideration that basically reiterates argument that was previously made and considered in the initial bid protest does not warrant reversal of the prior decision.

DECISION

Paulsen Construction Company requests reconsideration of our decision Paulsen Construction Co., B-231393, Sept. 13, 1988, 88-2 CPD ¶ 230, denying its protest of the rejection of the bid it submitted under invitation for bids (IFB) No. DACA05-88-B-0065, issued by the Corps of Engineers for construction of a two-story addition to an existing building for use as an avionics support facility at Hill Air Force Base, Utah. We also dismissed that portion of Paulsen's protest alleging that the awardee's bid should be rejected as nonresponsive.

We deny the request for reconsideration.

The IFB stated that award would be based upon the lowest total evaluated cost to the government. While the price the Corps would be required to pay a contractor for the work was fixed at the price bid by that particular contractor, the IFB's evaluation formula was designed to allow the Corps to estimate the total cost to the government of accepting a given bid. Therefore, the evaluation formula factored into each bid the cost of interest, liquidated damages, and overhead. In order to calculate a bid's evaluated cost total, the ratios or percentages representing these factors in the IFB were multiplied by the bidder's total contract price, or the number of days the bidder had estimated it would take to complete the work, or both, as set forth in the evaluation formula. The IFB specifically required bidders to submit a bid that included a "practicable" estimate of the shortest period required to complete the

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project. The IFB also made it clear that each offeror's estimate of the number of days to complete the project would be used as an important part of the evaluation formula to compute that offeror's evaluated price. Accordingly, the bidder's proposed construction schedule had a significant effect on the computation of the evaluated cost total.

In our prior decision, we found that the Corps properly rejected Paulsen's bid, because Paulsen had not proposed a practicable estimate of the time required for the construction, as required by the IFB. We concluded that Paulsen's submission of an overly-optimistic schedule had artificially skewed the evaluation in Paulsen's favor, causing Paulsen's fifth-low bid to be evaluated as the lowest-priced bid. We held that the agency was not required to accept Paulsen's higher-priced bid. We also dismissed Paulsen's claim that the awardee, Layton Construction Company, had submitted a nonresponsive bid that did not contain prices for all items in the bid schedule, because we found that Paulsen was not an interested party for the purpose of challenging the responsiveness of Layton's bid.

Paulsen first argues that our decision was flawed because we did not rule on whether Paulsen had submitted an unbalanced bid, as the contracting officer stated in rejecting the bid, or whether Paulsen was nonresponsive, as the Corps argued in its report to our Office on the protest.

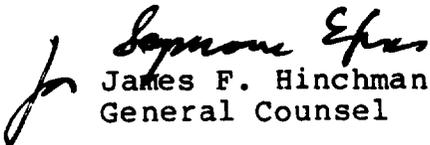
As we indicated in our original decision on Paulsen's protest, it does not matter how the Corps characterized the deficiency in Paulsen's bid. The fact is that the Corps reasonably determined that Paulsen's estimate that it would complete the construction work in only 210 days was so short--compared to the estimates of the other bidders (ranging from 315 days to 700 days), the Corps' own estimate of 540 days, and the actual completion times of other construction contracts--that Paulsen had not complied with the IFB's requirement that a practicable construction estimate be submitted. The Corps also reasonably determined that the effect of Paulsen's having submitted a construction schedule that was too short was to prevent meaningful evaluation of Paulsen's price. In essence, the contracting officer believed that, under the stated evaluation formula, the savings to be gained by accepting Paulsen's fifth-low bid were grossly exaggerated because Paulsen had submitted an unreasonably low construction estimate.

In view of the bid's deficient performance estimate, the Corps of Engineers was not required to accept Paulsen's

bid. As we stated in The Orkand Corp.; Department of the Navy--Reconsideration, B-224466.2 et al., Jan. 23, 1987, 87-1 CPD ¶ 88, the government should not be compelled to accept an offer--even if the bid is evaluated as low because of its scheduling/pricing structure--that poses a significant risk that the actual cost of performance will not be the lowest.

In the remainder of its request for consideration, Paulsen argues that the Corps' comparison between Paulsen's estimated time period and the time periods required to complete various other projects is invalid, because those other projects were constructed under contracts that did not contain the same evaluation clause as the present IFB, and, therefore, those contractors did not have the same incentive to complete the contracts as quickly as Paulsen proposed to do here. This argument is basically a restatement of an argument made by Paulsen and considered by our Office in the original decision on this protest, and, therefore, it provides no basis to reverse our prior decision. T.J. O'Brien Co., Inc.--Reconsideration, B-228244.3, Dec. 31, 1987, 88-1 CPD ¶ 4. Furthermore, we recognized in our previous decision that no two construction contracts are identical. Nonetheless, we found that the pattern presented by the other construction jobs showed convincingly, along with the other evidence proffered by the Corps, that Paulsen's estimate in this procurement was misleading for evaluation purposes.

The request for reconsideration is denied.


James F. Hinchman
General Counsel