The Comptroller General
of the United States

Washington, D.C. 20548

Codes

# Decision

**Matter of:** Noslot Pest Control, Inc.--Request for Reconsideration

**File:** B-234290.2

**Date:** August 16, 1989

**DIGEST**

Request for reconsideration is denied where protester fails to indicate error of fact or law or information not previously considered that would warrant reversal or modification of prior decision. The mere restatement of arguments previously considered or mere disagreement with the initial decision is not sufficient to warrant reconsideration.

**DECISION**

Noslot Pest Control, Inc., requests reconsideration of our decision, Noslot Pest Control, Inc., B-234290, Apr. 20, 1989, 68 Comp. Gen. ___, (1989), 89-1 CPD ¶ 396, denying the firm's protest of the General Services Administration's (GSA) award of a contract to any other bidder under invitation for bids (IFB) No. GS-11P-89MJC0015, for custodial services. Noslot claimed that the three low bids should have been rejected as nonresponsive, and thus that it is entitled to the award of a contract under the IFB.

We deny the request for reconsideration.

The IFB required the bidders to furnish a bid guarantee in an amount equal to 20 percent of the bid. The three low bidders, Trans-Atlantic Industries Inc., Complete Building Services, Inc., and Eastern Environmental Services, submitted bonds in the requisite amounts, each listing two individual sureties. All of the sureties completed their respective affidavits of individual surety, Standard Form (SF) 28, as required by the solicitation; however, none of the individual sureties complied with the solicitation requirement to submit a pledge of assets in the form of evidence of an escrow account containing commercial and/or government securities and/or a recorded covenant not to convey or encumber real estate.

In its original protest, Noslot first argued that the three low bids should have been rejected as nonresponsive based on the individual sureties' failure to submit pledges of assets. Noslot also argued in part that the three low bids are nonresponsive because the affidavits submitted by the sureties contained several defects.

In our decision, we held that the issue of whether or not a pledge of assets has been submitted with a bid is a question of responsibility that may be resolved any time prior to award, rather than, as Noslot argued, a question of responsiveness which must be determined from a facial examination of the bid package at bid opening. We pointed out that the failure to submit a pledge with a bid in no way affects the individual surety's liability, a matter of responsiveness; rather, it concerns a matter of responsibility since the pledge assists the contracting officer in determining the financial acceptability of the individual surety. See Aceves Constr. and Maintenance, Inc., B-233027, Jan. 4, 1989, 89-1 CPD ¶ 7. We concluded that even though the IFB required a pledge of assets from each individual surety, since the pledges contain information bearing on responsibility, they may be provided any time prior to award. See American Constr., B-213199, July 24, 1984, 84-2 CPD ¶ 95.

We also rejected Noslot's claim that the three low bids should have been rejected as nonresponsive because the affidavits submitted by the sureties contained several defects. Citing Hispanic Maintenance Servs., B-218199, Apr. 22, 1985, 85-1 CPD ¶ 461, and Fitts Constr. Co., Inc., 62 Comp. Gen. 615 (1983), 83-2 CPD ¶ 190, we stated that the issue of whether the assets listed in the sureties' affidavits are acceptable and sufficient to support the bonds is one of responsibility and thus, contrary to Noslot's argument, does not affect the responsiveness of the bids. Since each of the sureties properly executed a bid bond in a sufficient amount, submitted an affidavit showing a net worth in excess of the amount of the bond, and there were no obvious defects detracting from the sureties' liability on the bonds, we found the bonds acceptable on their face.

In its reconsideration request, Noslot again argues, as it did in its original protest, that the pledges of assets required by the IFB pertain to matters relating to responsiveness. In reiterating the other arguments made in its original protest, Noslot also claims that we overlooked its argument that the three low bids are nonresponsive because the affidavits submitted by the sureties contained several defects.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. See 4 C.F.R. § 21.12(a) (1988). The mere repetition of arguments made during the initial protest or disagreement with our decision does not meet this standard. G&C Enterprises, Inc.--Reconsideration, B-233537.2, May 10, 1989, 89-1 CPD ¶ 439.

After reviewing the record and the reconsideration request, we conclude that Noslot has merely repeated arguments made in its original protest and considered in our decision. In this regard, the critical fact ignored by Noslot in arguing that our initial decision was erroneous in regard to the bidder's failure to submit a pledge of assets and alleged defects in the affidavits of individual surety, is that the question of the financial acceptability of individual sureties is one of bidder responsibility, not responsiveness. Dan's Janitorial Serv., Inc., 61 Comp. Gen. 592 (1982), 82-2 CPD ¶ 217. Accordingly, we see no basis to disturb our original decision on the basis that Noslot disagrees with this long-standing rule.

Finally, Noslot argues for the first time in its reconsideration request that the bids submitted by Trans-Atlantic and Complete are nonresponsive because although their principals signed their respective bids, it is unclear that the sureties would be liable on the bonds absent the principals' signatures.1/ This argument is both untimely, since it could have been but was not raised in the initial protest, and unpersuasive. Under the law of suretyship, no one can be obligated to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. G&C Enterprises, Inc., B-233537, Feb. 15, 1989, 89-1 CPD ¶ 163. Thus, the determinative issue in this case is not, as Noslot's argument suggests, whether the bidder signed the bond; rather, the issue is whether it is clear

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1/ In the original protest, Noslot argued that even though the principals of Trans-Atlantic and Complete signed their bids, the bids are nonetheless nonresponsive because the principals did not sign their respective bonds, as required by the instructions on the standard bond form. We disagreed, citing P-B Eng'g Co., B-229739, Jan. 25, 1988, 88-1 CPD ¶ 71, which states that we do not regard the signature as a material requirement with which the bidder must comply in order to be responsive where, as here, the unsigned bond is submitted with a signed bid.

that the two named sureties intended to be bound. Here, all of the sureties signed their respective bid bonds, an obvious indication of their intention to be bound.

The request for reconsideration is denied.

for James F. Hinchman
General Counsel