



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: WN Hunter & Associates--Request for
Reconsideration

File: B-237168.2

Date: March 27, 1990

William N. Hunter, WN Hunter & Associates, for the
protester.

Barbara Timmerman, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Decision dismissing protest on grounds that protester's bid was nonresponsive is affirmed. Procurement regulations do not permit the correction of a material deficiency in a bid.
2. Arguments that protester was misled by solicitation provision into submitting information with its bid which resulted in the bid's rejection first raised in request for reconsideration will not be considered where they should have been raised in initial protest.

DECISION

WN Hunter & Associates requests reconsideration of our decision WN Hunter & Associates, B-237168, Nov. 3, 1989, 89-2 CPD ¶ 424, dismissing its protest against the rejection of its bid under invitation for bids (IFB) No. DAKF40-89-B-0157, issued by the Army for nursing services at Womack Army Community Hospital, Fort Bragg, North Carolina.

We affirm our decision.

The IFB contemplated the award of a fixed-price requirements contract for nursing services for a 1-year period. Bidders were required to submit prices in terms of fixed hourly rates for eight line items, each of which represented a particular nursing specialty and contained an estimate of

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the number of hours to be ordered. The rates were multiplied by the estimated number of hours and the resulting extended line item totals were added to arrive at a total bid amount.

Hunter submitted with its bid an additional document which stated that the Army would be invoiced weekly for any holiday and overtime pay. The agency rejected Hunter's bid as nonresponsive because it provided for the Army to pay overtime which was not contemplated by the IFB. In its protest to our Office, Hunter asserted that it should have been given the opportunity to resolve the alleged deficiency. We found that because of the statement concerning overtime, it was not clear from Hunter's bid what the agency's total payment obligation would be if it accepted the bid. We concluded that this deficiency rendered Hunter's bid nonresponsive and that consequently correction of its bid could not be allowed.

In its request for reconsideration, Hunter maintains that we dismissed its protest without reviewing all of the relevant information. Hunter asserts that its protest should not have been dismissed without a "thorough investigation" by our Office of the background documentation relating to the procurement. It also contends that contrary to our statement that a deficiency which makes a bid nonresponsive may not be corrected after bid opening, Federal Acquisition Regulation (FAR) § 14.404-2(e) allows a bidder to delete objectionable conditions from its bid.

Pursuant to our Bid Protest Regulations, we will summarily dismiss a protest when it is clear that it does not state a valid basis for protest. 4 C.F.R. § 21.3(m) (1989). Because it was evident from Hunter's submission that its bid was nonresponsive to the solicitation, we viewed the protest as appropriate for summary dismissal.^{1/} Thus, there was no reason for us to review additional documentation.

Contrary to the protester's assertions, FAR § 14.404-2(e) does not permit a bidder to correct a material deficiency in its bid. That clause provides that the agency may request a bidder to delete objectionable conditions from its bid provided the conditions do not go to the substance of the bid. It further defines a condition which affects the substance of a bid as one which affects price, quantity, quality or delivery. As stated in our decision, Hunter's

^{1/} Although the agency submitted a report in response to the protest, it was received after the decision dismissing the protest had been prepared and was not considered in any way.

submission of the statement concerning overtime created an ambiguity regarding the actual price of the services it offered. Since the submission affected price, it constituted a substantive condition which could not be corrected under FAR § 14.404-2(e).

Hunter further argues that it submitted the additional information in its bid in response to a clause in the IFB which stated that the government may require bidders to submit a statement of facts concerning the bidder's responsibility and maintains that the solicitation should have been issued as a request for proposals. First, we will not consider an argument first raised on reconsideration which should have been raised in the initial protest. See Noslot Pest Control, Inc.--Request for Recon., B-234290.2, Aug. 16, 1989, 89-2 CPD ¶ 144. In any event, we do not see how a solicitation provision warning bidders that they may be asked for information concerning their responsibility can be interpreted as soliciting a "proposal" describing the protester's intent to invoice the government for overtime. As far as Hunter's argument relative to the use of competitive negotiation instead of sealed bidding is concerned, even if it had been raised in the initial protest it would have been dismissed as untimely since it involves a solicitation impropriety that should have been raised prior to the bid opening. 4 C.F.R. § 21.2(a)(1) (1989).

We have reviewed our decision and do not find that it was based on an error of fact or law and, therefore, we have no basis on which to disturb it. 4 C.F.R. § 21.12(a).

The decision is affirmed.


for James F. Hinchman
General Counsel