



Comptroller General
of the United States

Washington, D.C. 20548

147009

Decision

Matter of: Signal Communications System and Supply, Inc.
File: B-245805.2
Date: June 25, 1992

John H. Horne, Esq., Ogletree, Deakins, Nash, Smoak & Stewart, for the protester.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision dismissing protest is affirmed where protester fails to show that decision contained errors of law or fact.

DECISION

Signal Communications System and Supply, Inc. (Sigcom) requests reconsideration of our decision, Signal Comms. Sys. and Supply, Inc., B-245805, Jan. 29, 1992, in which we dismissed its protest of the Department of the Air Force's rejection of its bid under invitation for bids (IFB) No. F08626-91-B-0064, step two of a two-step sealed bid acquisition, issued as a small business set-aside for engineering, furnishing, and installing a fiber optic telecommunication link between Indian Springs Air Force Auxiliary Field, Nevada, and Nellis Air Force Base, Nevada. Sigcom complained that the Air Force had improperly rejected its bid as nonresponsive based on its certification that not all end items to be furnished would be manufactured or produced by a small business concern. We held that the agency had acted properly, a conclusion that Sigcom continues to dispute in its request for reconsideration.

We affirm our prior decision.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contained either errors of law or fact or that relevant information was not considered. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1992); Gracon Corp.-- Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. Sigcom has not made such a showing here.

Sigcom argues first that we erred in stating in our prior decision that it intended to furnish end items manufactured by a company which is other than a small business. The protester contends that it was clear from its protest that it intended "to provide end products from only itself, a small business, with other than small business contributing some of the components"

The protester misconstrues our prior decision. We did not state that the protester intended to furnish other than small business end items; rather, we noted that, regardless of its intent, Sigcom had represented in its bid that not all end items would be manufactured or produced by a small business concern. We further noted that Sigcom explained in its protest that it had certified that not all end items would be small business manufactured because it in fact intended to furnish some items which had been manufactured by a company which is other than small. To the extent that the protester is contending that it did not make such a statement, we refer it to page 3 of its initial protest, where it stated as follows:

"Sigcom checked this block [i.e. the block indicating that not all end items would be manufactured or produced by a small business concern] in good faith reliance on its reasonable interpretation that while the majority of the work and materials would be supplied by Sigcom, a small business, there would be items manufactured and produced by a company which is not a small business enterprise" (Emphasis added.)

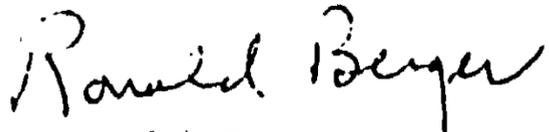
Although, as we pointed out in our prior decision, it appeared from this explanation that the protester may have misunderstood what was meant by end item and accordingly checked the wrong box, such a misunderstanding does not provide a basis for correcting the bid after opening.

Sigcom next argues that we erred in our prior decision in holding that its bid was ambiguous with regard to whether or not all end items to be furnished would be manufactured by a small business. We held that the bid was ambiguous because, although Sigcom was obligated pursuant to the terms of Federal Acquisition Regulation § 52.219-6, which was incorporated into the solicitation, to furnish only small business end items in its performance of the contract, the protester had affirmatively represented elsewhere in the bid that not all end items would be manufactured or produced by a small business concern. Sigcom maintains that its bid was not ambiguous since the section of the solicitation in which it represented that not all end items would be small business manufactured had not been incorporated into the IFB and should therefore not have been considered in determining

the responsiveness of its bid. The protester bases its assertion that Section K, "Representations, Certifications, and other Statements of Offerors," was not incorporated into the solicitation on the fact that a check mark was not placed next to this heading in the solicitation's table of contents on Standard Form 33.

We do not think that it can be realistically argued that pages included in a solicitation package are not in fact part of the solicitation simply because the solicitation's table of contents fails to refer to them. If the protester had genuinely been unsure whether the pages ought to be considered part of the IFB, this is a matter which it should have raised with contracting officials prior to bid opening. See Adrian Supply Co., B-225630.2, May 7, 1987, 87-1 CPD ¶ 489.

Since Sigcom has not demonstrated any errors of law or fact in our prior decision, our prior decision is affirmed.


Ronald Berger
Associate General Counsel