



Comptroller General
of the United States

Washington, D.C. 20548

Ms. Westfall

324284

Decision

Matter of: Coastal Expanded Metal Company, Inc.--
Reconsideration

File: B-254229.2

Date: May 3, 1994

R. Thompson Wright, Esq., and Richard J. Votta, Esq., Nichols, Caffrey, Hill, Evans & Murrelle for the protester. Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration is denied where even assuming that prior finding of no prejudice was in error, same result--i.e., denial of protest--would have been reached on alternative ground.
2. Where contracting officer had informed protester that in order to waive sample requirement in solicitation, he would require technical representative's written approval of samples submitted under previous solicitation, it was unreasonable for protester to rely on technical representative's oral representation that samples were acceptable without confirming that written approval had in fact been furnished to the contracting officer.

DECISION

Coastal Expanded Metal Company, Inc. (CEMCO) requests reconsideration of our decision, Coastal Expanded Metal Co., Inc., B-254229, Nov. 30, 1993, 93-2 CPD ¶ 291, denying its protest of the rejection of its bid under invitation for bids (IFB) No. 1PI-B-0485-93, issued by the Department of Justice, Federal Prison Industries, Inc., for expanded metal used in building prison partitions.

We deny the request for reconsideration.

In its protest, CEMCO asserted that it had failed to submit samples with its bid--resulting in rejection of the bid as nonresponsive--because it had been incorrectly informed prior to bid opening that samples that it had submitted for testing in conjunction with an earlier procurement for the same item had been approved and could be used to satisfy

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the requirement for samples in this IFB. We concluded that even if, as CEMCO alleged, the contracting officer's technical representative had incorrectly advised it that its previously submitted samples had been approved, the protester had not been prejudiced by the misinformation since testing of the samples had not in fact been completed by the bid opening date and we saw no reason to think--nor had the protester asserted--that it would have submitted another set of samples with its bid if no decision had yet been made regarding the acceptability of the first set.¹

The protester contends that we erred in finding that it was not prejudiced by the agency's failure to inform it that testing of its previously submitted samples had yet to be completed. The protester argues that it had reason to think that its previously submitted samples might be nonconforming and that it was therefore prepared to submit--and would have submitted--additional samples with its bid had it not been misinformed as to the acceptability of the previously submitted items.

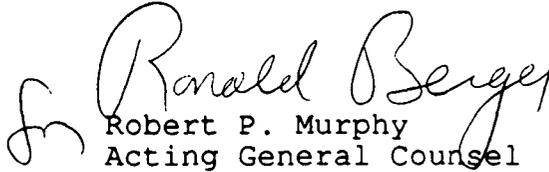
The protester's argument is in essence that but for the incorrect information allegedly communicated to it by the contracting officer's technical representative during a telephone conversation on April 8, on which it reasonably relied, it would have submitted additional samples with its bid. We disagree with CEMCO's premise that it was reasonable for it to rely on this telephone call without taking any further steps to establish that the technical representative had in fact communicated this approval to the contracting officer. In this regard, the protester conceded in its original submission that the contracting officer had informed it that he would need something in writing from the technical representative to the effect that the previously submitted samples had been approved for the tests to

¹In its request for reconsideration, the protester summarizes our prior decision as holding that "although [the contracting officer's technical representative] incorrectly informed CEMCO that its bid samples which had been submitted under an earlier procurement had been approved and could be used to satisfy the requirement for bid samples under the current solicitation, CEMCO was not unfairly deprived of the opportunity to submit additional samples because there was no reason to think that it would have submitted modified samples if the [technical representative] had correctly stated that the earlier samples had not been tested." This is not a correct summary of our holding. We did not find that the technical representative had incorrectly informed CEMCO that its samples had been approved; we declined to reach that issue since, in our view, it would not have a significant bearing on the outcome of the protest.

apply to the new bid. In addition, in its reconsideration request CEMCO states that it "had substantial reason to be concerned about the adequacy of the samples." Given that CEMCO had been informed that written approval of its previously submitted samples would be required, and that CEMCO itself had reason to question whether the samples were acceptable, we think that it was incumbent upon the protester to establish, prior to submitting its bid without samples, that written approval had in fact been received. The protester has presented no evidence that it attempted to contact either the contracting officer or the contracting officer's technical representative after April 8 to verify that written approval had been transmitted. Under the circumstances, we do not think that it was reasonable for it to fail to do so.

Even assuming, then, that CEMCO would have submitted additional samples with its bid had it been informed that testing of the previously submitted ones had yet to be completed, we think that CEMCO's protest was still properly denied because its reliance upon the technical representative's alleged representations concerning the acceptability of its earlier samples was unreasonable.

The request for reconsideration is denied.


Robert P. Murphy
Acting General Counsel