

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-183791

DATE: March 2, 1976

MATTER OF: W. A. Apple Manufacturing, Inc.--Reconsideration

DIGEST:

B-183791, September 23, 1975, is affirmed upon reconsideration. Low bid which took no exception to invitation requirements is responsive and fact that low bidder inserted approximate guaranteed shipping weights and dimensions under standard guaranteed maximum shipping weights and dimensions clause affected only determination whether bid was most financially advantageous to Government.

W. A. Apple Manufacturing, Inc. (Apple), has requested reconsideration of our decision B-183791, September 23, 1975. In that decision, we denied Apple's protest that Waterfront Rope and Canvas Corp.'s (Waterfront) low bid was nonresponsive because it inserted approximate guaranteed maximum shipping weights and dimensions. Apple had contended that Waterfront's bid was rendered nonresponsive because it was impossible for the Government to (1) accurately evaluate total costs for the contract or arrive at a fixed-overall price for the bid; and (2) establish a standard for contract price reduction in the event the stated weight is exceeded pursuant to the terms of the resulting contract. We rejected Apple's contentions since the record disclosed that there was no real likelihood that Waterfront's low bid would exceed the second low bid based on an analysis by GAO transportation rate technicians using high weights and dimensions which they knew were well beyond any reasonable interpretation of the approximate weights and dimensions inserted by Waterfront in its bid. Also, Waterfront was obligated to perform the contract in compliance with the specifications.

In the decision, we stated that the purpose of the guaranteed maximum shipping weight clause is twofold: (1) to enable the Government to accurately ascertain its total costs for a proposed contract and (2) to establish contract price reduction in the event the shipping weight is exceeded. Counsel for Apple states that the insertion of "200 lbs., APPROX." as the guaranteed maximum shipping weight (GMSW) fails to be responsive to either of the

stated GAO policy justifications for the GMSW and is legally indefensible. We note here that the Waterfront bid guaranteed a maximum shipping dimension of 28x12x12 inches "(APPROX)."

Counsel contends that Waterfront's "200 lbs. APPROX." term is neither definite, nor responsive and does in fact limit the liability of Waterfront in the event its shipment will exceed 200 pounds. Counsel refers to decisions of our Office holding that the failure of a bidder to specify the GMSW of an item to be furnished on an f.o.b. origin basis as required by the IFB is an omission of an essential bid element which is necessary for a determination of the total amount the Government will be required to pay for the item. Counsel also refers to our decisions which have held that the failure of a bidder to make a definite reply to the GMSW specification request rendered the bid nonresponsive.


For the following reasons, we conclude again that the Waterfront bid was responsive. Of particular significance, by taking no exceptions to the requirements of the invitation, the Waterfront bid obligated the firm to meet all requirements of the invitation. As we stated in 48 Comp. Gen. 357 (1968), the shipping weights and dimensions are material only to the determination of the Government's ultimate costs making their omission affect only the determination of whether the bid as evaluated would be the most advantageous to the Government. A bid which fails to insert guaranteed weights and dimensions should be regarded as responsive unless that failure precludes the making of the determination with a reasonable degree of certainty. As our prior decision indicated, we were able to conclude with reasonable certainty that Waterfront's bid clearly would be the most advantageous to the Government.

We see no reason to apply a different rule in a case where a bid contains approximate as opposed to no guaranteed weights and dimensions. The use of approximate weights and dimensions presents a stronger case for acceptance of a bid. This is so because where a bidder approximates weights and dimensions, the Government would be able to recover some measure of excess shipping costs. For example, if the actual shipping weight was 300 pounds, which is far in excess of any reasonable interpretation of "200 lbs., APPROX.," a determination could be made to proceed against the contractor. Where no weights or dimensions are inserted, the Government has no recourse for excess transportation costs.

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In any event, as we stated in our prior decision, Waterfront's bid would remain the low responsive bid by a significant amount under any reasonable interpretation of the approximate weights and dimensions inserted by Waterfront in its bid. This situation, in our view, provided legal support for the award made to Waterfront.

We do not believe that Apple's request for reconsideration presents any evidence demonstrating errors of fact or law in our earlier decision and, accordingly, that decision is affirmed.


Deputy Comptroller General
of the United States