

**DECISION**

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

40072

FILE: B-184316

DATE: October 21, 1975

MATTER OF: Robert Gay Construction Company

97804

**DIGEST:**

1. Prior decision denying protest reaffirmed upon reconsideration where protester disagrees with GAO conclusions, merely reiterating prior allegations.
2. Only new allegation, that competitor's bid bond was deficient, is untimely and not for consideration on merits where allegation is first raised more than 2 months following award of contract.

The foregoing concern has requested reconsideration of our decision B-184316, August 25, 1975, 75-2 CPD 124, in which we denied its protest against the award of a contract to Construction Southeast, Inc. (Construction) pursuant to invitation for bids DAHA08-75-B-0003, issued by the Departments of the Army and Air Force, National Guard Bureau, St. Augustine, Florida, for the construction of a composite maintenance facility and petroleum operations facility.

The Bid Form set forth three items upon which bidders were invited to submit prices. Item No. 1 was a total bid price for the composite maintenance facility; Item No. 2 was for the petroleum operations facility; and Item No. 3 was a price for both Items 1 and 2. The Bid Form stipulated that the Government might accept any item or combination of items of a bid unless the bidder included in his bid a restrictive limitation.

Upon the opening of bids it was revealed that all bidders except Construction submitted a price for each item. Construction submitted a price for Item No. 3 only, i.e., an aggregate price for both Items 1 and 2. Adjacent to Items 1 and 2, it inserted "No Bid." Inasmuch as Construction's aggregate bid price was not only the lowest submitted under Item 3, but also lower than any combination of individual prices of any of the bidders for Items 1 and 2, Construction was awarded a contract for all of the work pursuant to the Bid Form stipulation permitting acceptance by the Government of any item or combination of items.

The protester made several assertions upon which it urged that Construction's bid should have been considered nonresponsive, and two of the bases upon which the protester seeks reconsideration are identical to those raised in its initial protest. These involve allegations that language on the first page of the invitation calling for full, accurate and complete information as required by the invitation, and language on the face of the Bid Form requiring "compliance with the above dated Invitation for Bids \* \* \*" require the entry of a bid price for each item in order for a bid to be considered responsive. Those same allegations were carefully considered and addressed in our decision of August 25. While we have reconsidered them, we discern no bases upon which to depart from our conclusions in that decision.

Robert Gay Construction Company (Gay) points out that the same statement appearing on the first page of the invitation is repeated in the Representations and Certifications section, contending that if the first page language was directed at contractor statements or representation as concluded in our decision, then it would be superfluous. We agree that it may be superfluous, but see no basis to depart from our earlier conclusions.

The protester disagrees with the concluding paragraph of our decision in which we concluded that Construction's bid was tantamount to an "all or none" bid, and that a low bid on an "all or none" basis must be considered responsive in the absence of a provision in the solicitation to the contrary. Gay apparently contends that the Bid Form does not permit "all or none" bids.

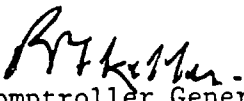
In our decision, we observed that the Bid Form explicitly provided that the Government could accept bids on any item or combination of items "unless the Bidder includes in his bid a restrictive limitation," which we interpreted as permitting "all or none" bids. While we have reconsidered this matter also in the light of Gay's allegation, we are unable to conclude that our interpretation was in error.

Finally, by letter dated September 2, 1975, which was received by our Office on September 4, 1975, Gay has raised for the first time the allegation that Construction's bid should not have been read at bid opening because its bid bond was invalid by virtue of a power of attorney certification dated 8 days prior to bid opening, in the absence of evidence presented at bid opening that the power of attorney had not been revoked in the intervening 8 days.

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The record shows that the contract was awarded to Construction Southeast on June 24, 1975, and that all bidders including the protester were advised of the award by letter of that date. In this regard, section 20.2(b)(2) of our current Bid Protest Procedures requires, in pertinent part, that bid protests be filed not later than 10 days after the basis therefor is known, or should have been known, whichever is earlier. Any allegation filed more than 2 months after notification of award of the contract to the effect that the bid bond was deficient is manifestly untimely under the cited provision, and therefore ineligible for our consideration on the merits.

Accordingly, our decision of August 25, 1975, is affirmed.

  
Deputy Comptroller General  
of the United States