

DOCUMENT RESUME

03632 - [A2693849]

[Request for Reconsideration of Protest Based on Compliance with Delivery Schedule]. B-188651. September 21, 1977. 3 pp.

Decision re: Fischbeimer Bros. Co.; by Robert P. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: District of Columbia; S. Abrahams & Co., Inc.

Authority: 49 Comp. Gen. 553. B-188174 (1977). 4 C.F.R. 20.

A company requesting reconsideration of a decision maintained that the delivery date which was to have been submitted by all bidders was a crucial item since failure to submit this information would have resulted in rejection of all bids as nonresponsive. The protester also alleged that the awardee was not performing in accordance with the delivery schedule. The former decision holding that the low bidder did not comply with the delivery schedule in specifications was affirmed since no additional facts or legal arguments showing erroneous decision were offered. The allegation concerning contractor compliance was not considered since this was a matter of contract administration. (HTW)

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DECISION



Bruce Chernik
Proc. I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20540

FILE: B-188651

DATE: September 21, 1977

MATTER OF: Fechheimer Brothers Company

DIGEST:

1. Prior decision holding that low bidder did not comply with delivery schedule in specifications since it did not offer delivery within 60 calendar days or otherwise shortest delivery time is affirmed upon reconsideration since bidder has not advanced any additional facts or legal arguments showing decision was erroneous.
2. Allegation concerning contractor compliance with delivery schedule will not be considered by our Office since allegation involves matter of contract administration which is function and responsibility of procuring activity and not for resolution under Bid Protest Procedures.

Counsel for Fechheimer Brothers Company (Fechheimer) requests reconsideration of our decision in Fechheimer Brothers Company, B-188651, July 6, 1977. In that decision, we held that award to the second low bidder was not legally objectionable since the second low bidder offered the shortest delivery schedule and the invitation for bids provided for award to the bidder offering the shortest delivery time if otherwise complying with the specifications should no other acceptable bid offering delivery within 60 days be received. Since Fechheimer, the low bidder, did not offer delivery within 60 calendar days, or the otherwise shortest delivery schedule, its bid was rejected.

Fechheimer, in its request for reconsideration, maintains that the suppliers' mill delivery date which was to have been submitted by all bidders was a crucial item. Fechheimer contends that had this information not been submitted, the D.C. Government would have been required to reject all bids as nonresponsive. In addition, Fechheimer states that S. Abrahams & Co., Inc. (SACO), the awardee, is not performing the contract in accordance with the delivery schedule.

The invitation contained a requirement that all bidders submit a statement from their suppliers as to when the material would be available for delivery. All bidders submitted bids predicated on using Raeford Worsted Company (Raeford), the stipulated brand name, as their supplier. Raeford submitted letters to the D.C. Government on January 11 and February 11, 1977. Initially, the D.C. Government was advised by Raeford that the fabric could be furnished to the successful bidder in 6-8 weeks from receipt of a firm purchase order. Subsequently, Raeford advised the D.C. Government that the fabric could be supplied in 4-6 weeks from receipt of order. The record does not indicate that any bidders submitted letters from Rasford or any other supplier to the D.C. Government but instead relied on Raeford's letters of January 11 and February 11, 1977, to the D.C. Government.

The D.C. Government took the position that the supplier's letter was merely informational for the benefit and convenience of the Government and that it was to be used to determine the responsibility of the bidder. If the mill's delivery date clearly indicated that it would be impossible to meet the bidder's designated delivery schedule, the D.C. Government would have to reject the bidder on the basis of nonresponsibility. See 49 Comp. Gen. 553 (1970).

We agree with Fechheimer's contention that the mill delivery date was a crucial item. Although the D.C. Government did indicate in the agency report that the purpose of the supplier's letter was for informational purposes only, it also stated that the letter would be used to determine a bidder's responsibility. Whether a bidder can meet its delivery obligations under a requirements contract is a question of responsibility. See 49 Comp. Gen. 553, supra. In the instant case, the issue was whether the bidders could meet the specified delivery requirements and not whether the product offered met the needs of the procuring activity, which is a matter of responsiveness. The Fechheimer bid, by adding the words "& Material from Mill" to its number of calendar days (60) clearly did not offer delivery within the prescribed time (60 days), or the otherwise shortest time (which was 60-75 days offered by SACO). The requirement that the supplier submit a statement as to material availability in no way detracted from the bidder's obligation to deliver within the required time. Therefore, SACO was properly determined to be the low responsive and responsible bidder.

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The question of whether SACO is performing the contract in compliance with the delivery schedule is a matter of contract administration which is the function and responsibility of the procuring activity. Matters of contract administration are not for resolution under our Bid Protest Procedures, 4 C.F.R. part 20 (1977), which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. SNI (Watertown), Inc., B-188174, February 8, 1977, 77-1 CPD 98.

Fachheimer has not advanced any additional facts or legal arguments which show that our earlier decision was erroneous. Consequently, our decision of July 6, 1977, is affirmed.

R. K. Teller
Acting Comptroller General
of the United States