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DECISION



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

FILE: B-205726.2

DATE: August 16, 1982

**MATTER OF: Data Controls/North Inc.,--Request
for Reconsideration**

DIGEST:

1. Where protester reiterates an argument which was considered and rejected in the original protest, such argument will not be considered again in a request for reconsideration.
2. Letter accompanying bid for keypunch services stating that bidder would adjust its price if number of keystrokes in specifications was less than number required made bid nonresponsive primarily because letter had effect of altering Changes and Disputes provisions. Therefore, possibility that price adjustment would not exceed next high bid would not justify accepting protester's bid.
3. Since Changes and Disputes provisions constitute a material part of proposed agreement between bidder and contracting agency, bidder's attempt to alter those procedures cannot be waived as a minor informality.
4. Possibility that the Government might realize monetary savings in a particular procurement if material bid deficiency is waived is outweighed by importance of maintaining integrity of competitive bidding system.

Data Controls/North Inc. requests reconsideration of our decision in Data Controls/North Inc., B-205726, June 21, 1982, 82-1 CPD 610, denying its protest of

the Department of the Army's rejection of its bid as non-responsive under Invitation for Bids (IFB) DAAD05-81-B-5098. In that decision we concluded that Data Controls' bid for keypunch and verification services was nonresponsive because a letter accompanying the bid stated that the bidder would adjust its price if the number of keystrokes specified for each card was less than the number actually required to perform the services. It was our view that by this letter Data Controls intended to predetermine the formula to be used in calculating any equitable adjustment without resorting to the required Changes and Disputes procedures.

Our Bid Protest Procedures require that a request for reconsideration specify any error of law made or information not previously considered in the protest, 4 C.F.R. § 21.9(a) (1982). Data Controls' first ground for reconsideration is that its letter submitted with the bid merely restated the bidder's rights under the Disputes and Changes procedures. We considered and rejected this argument in our original decision. This argument therefore does not constitute a ground for reconsideration. See Twigg Corporation--Request for Reconsideration, B-204243.2, January 5, 1982, 82-1 CPD 12.

Next, Data Controls argues that we failed to consider the principle in 36 Comp. Gen. 259 (1956) that a bid is not to be rejected because of conditional pricing where it is not likely the conditions will cause the price to rise above that of the next higher bidder, and that we ignored Federal Procurement Regulations § 1-2.405 concerning the waiver of minor informality or irregularities. In addition, Data Controls maintains that the rejection of its bid will result in an increase in the Government's costs because of the rejection of Data Controls' bid which included only a minor technical deficiency.

We do not believe that 36 Comp. Gen. 259, supra is applicable to this situation. In that case, we held that a bid for parts which contained language stating that the bid price would be subject to adjustment based on the number of radiographs of the parts needed for inspection should not have been rejected because the agency made no determination that the possible excess radiographs would cause the price to exceed that of the next highest bidder.

Since in that case there was no indication in the specifications of the number of radiographs required (the number was under the control of the bidder), the only issue was whether the price with the escalation could exceed that of the next higher bidder. In this case, as the number of keystrokes was specified, any price adjustment based on the inaccuracy of those specifications would constitute a claim for equitable adjustment which may only be made under the specified Changes and Disputes procedures. Data Controls' reservation did not cause its rejection only because its price could not be evaluated, but most importantly because it was inconsistent with the Changes and Disputes procedures and we believe that it is not fair to the other bidders to permit one firm to reserve rights under those procedures not available to all bidders.

The applicable regulation, Defense Acquisition Regulation § 2-405 (FPR § 1-2.405, which pertains to civilian agencies, does not apply to this Army procurement) permits the waiver of an immaterial or inconsequential defect. It does not apply to the reservation submitted with Data Controls' bid as that condition not only could have a significant effect on price, but also, by purporting to automatically entitle the bidder to a price adjustment, was inconsistent with the Changes and Disputes provisions of the solicitation. Those provisions form a material part of the proposed agreement between the bidder and the contracting agency.

With respect to Data Controls' contention that the rejection of its low bid will result in additional cost, we have long held that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize monetary savings in a particular procurement if a material deficiency like the condition reserved in Data Controls' bid is waived. 1010 Incorporated of Alamogordo, B-204742, December 21, 1981, 81-2 CPD 486.

Our decision is affirmed.

Wilton J. Ainslie
for
Comptroller General
of the United States