

DECISION

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

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FILE: B-209707.2**DATE:** September 2, 1983**MATTER OF:** R.A. Schemel & Assoc., Inc.--
Reconsideration**DIGEST:**

1. Bidder who was adversely affected by prior decision, but who did not submit comments during initial protest, is a proper party to submit a request for reconsideration when that party was not notified that a protest was filed with GAO.
2. Request for reconsideration which does not contain information not previously considered is denied.

R.A. Schemel & Assoc., Inc. (R.A.), requests reconsideration of our decision JEM Development Corporation, B-209707, April 22, 1983, 83-1 CPD 444. In that decision, we sustained JEM Development Corporation's (JEM) protest against the Department of the Army's (Army) rejection of JEM's low bid as nonresponsive under invitation for bids (IFB) No. DACW43-82-B-0066. As a result of our decision, JEM was awarded the contract.

The original IFB contained 17 separate items and instructed bidders to bid on all items. As amended, the IFB deleted item No. 12, broke down item No. 16 into items Nos. 15, 16 and 17, and renumbered old item No. 17 as item No. 18. The Army rejected JEM's low bid as nonresponsive because the bid was submitted on the original rather than the revised bid schedule. We found that JEM had acknowledged the amendment which contained all the substantive changes to the IFB and, therefore, JEM was legally bound to perform in accordance with the Army's requirements. Consequently, we found that JEM's bid was responsive and the Army, based on our recommendation, awarded the contract to JEM. R.A., the second low bidder on the solicitation, was not notified of JEM's protest and did not participate. R.A. claims that we erroneously found JEM's bid responsive.

As a preliminary matter, we find that R.A. is a proper party to submit a request for reconsideration. Under our Bid Protest Procedures, this Office generally will not consider a request for reconsideration from a party who did not submit comments during the original protest. See 4 C.F.R. § 21.9(a) (1983). However, we have found that this rule

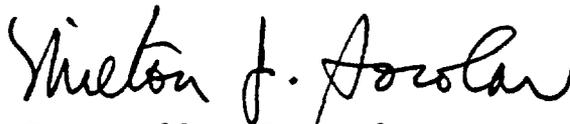
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does not apply where, as here, the record does not show that the interested party was notified of the protest to GAO and that it could submit comments. See CFE Air Cargo, Inc., B-185515, August 27, 1976, 76-2 CPD 198. Therefore, we will consider R.A.'s request for reconsideration.

However, our Bid Protest Procedures require that a request for reconsideration specify any error of law made or information not considered in the previous protest. 4 C.F.R. § 21.9(a) (1983); Twiggy Corporation--request for reconsideration, B-207273.2, January 5, 1982, 82-1 CPD 12. R.A. alleges that we erroneously found JEM's bid responsive because we failed to consider Instruction to Bidders No. 5(b), which provides "where the bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid." R.A. reasons that since the revised bid form contained items Nos. 15, 16 and 17 and JEM submitted its bid on the original form where these items were all part of the work required by item No. 16, JEM did not, as required by the specifications, submit a bid for every item. R.A. concludes that JEM's bid should have been disqualified.

Although our decision in JEM does not specifically address Instruction to Bidders No. 5(b), we considered R.A.'s present argument when we agreed with JEM that the revised schedule had no effect on the solicitation's requirements because the work contemplated by new items Nos. 15, 16 and 17 was required by old item No. 16. Our acceptance of this conclusion and our finding that JEM's bid obligated it to meet all the Government's needs necessarily included our determination that JEM submitted a bid for all items. Accordingly, we find that R.A. has not alleged any factors which were not considered in the original protest.

The prior decision is affirmed.



Acting Comptroller General
of the United States