

DECISION

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

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FILE: B-213245.3**DATE:** May 22, 1984**MATTER OF:** Tillipman Elevator Co., Inc.--Request for
Reconsideration**DIGEST:**

Original decision sustaining a protest is affirmed where interested party fails to establish in its reconsideration request that the decision was based on errors of law or did not take into consideration all relevant evidence and arguments timely presented.

Tillipman Elevator Co., Inc. requests reconsideration of our decision Reliable Elevator Corp., B-213245.2, March 7, 1984, 84-1 CPD ¶ 276, sustaining Reliable's protest that the Veterans Administration (VA) had improperly rejected as nonresponsive its low aggregate bid on a solicitation for elevator maintenance services. We affirm our decision.

VA had rejected Reliable's bid because, although it offered the lowest price for maintaining all 20 elevators covered by the requirement, it did not contain a unit price for each elevator as called for under the invitation for bids (IFB). VA then awarded a contract for the entire requirement to Tillipman, the only other responsive bidder, at an aggregate price greater than that bid by Reliable. We found that Reliable's bid was tantamount to an all or none bid, that it was responsive to the IFB, which did not prohibit all or none bidding, and that it should have been accepted for award since it represented the lowest total cost to the government. We thus recommended that the VA terminate Tillipman's contract for convenience and make an award to Reliable for the remainder of the contract term.

Tillipman asserts two principal arguments in support of its reconsideration request. First, it claims our decision disregarded an October 21, 1983 letter addressed to a VA Assistant Deputy Administrator in which a contracting official explained that unit prices were required due to the likelihood that certain elevators

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would be taken out of service during the performance period; unit prices would provide a basis for making contract price adjustments if this happened. Tillipman argues that the unit pricing requirement was material, and that Reliable's bid therefore was nonresponsive, since without unit prices the government would be unable to adjust the contract price if some of the elevators eventually were taken out of operation.

Although Tillipman furnished us a copy of the October 21 letter with its comments on the protest, our decision did not discuss this argument because the VA never asserted it. Indeed, the VA neither provided us a copy of the letter nor referenced it in its administrative report. In any event, this argument would not have changed our decision.

VA's intentions notwithstanding, the IFB did not provide that unit prices were necessary for contract price adjustments. Since a bid is nonresponsive only where it does not offer performance precisely in accordance with the material terms and conditions disclosed in the IFB, Boskind Development, Inc., B-213679, Dec. 2, 1983, 83-2 CPD ¶ 639, Reliable's failure to furnish unit prices could not render its bid nonresponsive on the ground that it would prevent the VA from accomplishing a purpose not disclosed in the IFB. See Sere Construction Corp., B-205098, May 11, 1982, 82-1 CPD ¶ 453.

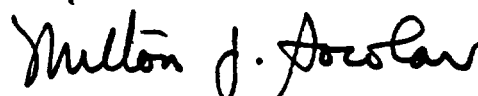
The sole purpose of the unit prices, according to the IFB, was to enable the government to consider whether multiple awards would be in its best interest. Since, as we stated in our decision, the IFB did not at the same time prohibit all or none bidding, Reliable's bid stating only an aggregate price could not be rejected as nonresponsive despite the IFB requirement for unit prices. The fact that it may be more difficult for VA to arrive at an accurate contract price adjustment in the event elevators are taken out of service is not, by itself, a sufficient basis for rejecting Reliable's bid.

Tillipman's second argument in support of its reconsideration request is that Reliable's aggregate bid could not be accepted because it was not identified as a discounted offer as allegedly required by the IFB. We reject this argument. The IFB provision cited by Tillipman was apparently included to make sure that a discounted price

offered for the acceptance of all items was not interpreted to be a mathematical error by the bidder in adding its unit prices. Since Reliable did not include unit prices in its bid, there was no reason to label its total price. In any event, this allegation is not a basis on which we would reconsider our decision since it could have been, but was not, raised by Tillipman in its interested party comments filed during our consideration of Reliable's protest. See generally Owl Resources Company--
Reconsideration, B-210094.2, July 11, 1983, 83-2 CPD ¶ 71.

Tillipman makes several additional assertions which essentially restate the arguments already addressed here or in our prior decision.

As Tillipman has not established that our decision sustaining Reliable's protest was based on errors of law or failed to take into account all relevant information and arguments timely presented, that decision is affirmed.


for Comptroller General
of the United States