

Shipman

31683

DECISION



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

FILE: B-218894.2 **DATE:** July 16, 1985
MATTER OF: Ginter Welding Inc.--Reconsideration

DIGEST:

Decision is affirmed where request for reconsideration presents no errors of law or facts not considered in prior decision.

Ginter Welding Inc. (Ginter) requests reconsideration of our decision, Ginter Welding Inc., B-218894, May 29, 1985, 85-1 C.P.D. ¶ 612, in which we dismissed its protest challenging the determination by the Department of the Army that Ginter's bid on invitation for bids (IFB) No. DAAE07-85-B-J320 was nonresponsive and could not be considered for award.

The IFB was a total small business set-aside which required that all supplies to be furnished under the proposed contract be manufactured or produced by domestic small businesses. In furtherance of this requirement, the IFB called on bidders to certify whether or not all supplies to be furnished under the contract would be produced or manufactured by small businesses. Ginter certified that it was a small business, but also certified that all supplies to be furnished would not be produced or manufactured by small businesses. Since Ginter thus did not obligate itself to furnish the products of small businesses if awarded the contract, we held that the Army properly found the bid non-responsive. Although Ginter claimed it had interpreted the certification to refer to materials used in the manufacture of the supplies rather than the supplies to be "furnished" under the contract as expressly stated in the IFB certification, a nonresponsive bid cannot be made responsive by such explanations after bid opening. Were the rule otherwise, a bidder could elect to be responsive or nonresponsive after the bids had been revealed as its interests dictated. This would be prejudicial to other bidders.

In its reconsideration request, Ginter essentially reiterates its position that the language of the certification clause was confusing. Our reconsideration procedure

030554

31683

is reserved for review of alleged errors of law and information not previously considered in prior decisions. 4 C.F.R. § 21.12(a) (1985). As we already have considered Ginter's argument that the certification was confusing, we will not do so again here. See Tritan Corp.--Reconsideration, B-216994.2, Feb. 4, 1985, 85-1 C.P.D. ¶ 136.

Ginter also seems to argue in its reconsideration request that its indication under clause K-29 in its bid that its small business facility was the place of performance should have been sufficient to establish that the supplies would be furnished by a small business. The place of performance clause in a bid, however, expresses only a present intent to provide the principal producing facility. The purpose of the clause is informational and relates solely to bidder responsibility rather than to a performance location commitment. As a firm is not precluded from changing the designated intended place of performance after bid opening, Ginter cannot be said to have assumed a legal obligation to furnish supplies manufactured by a small business merely by virtue of the place of performance clause. Hanson Industrial Products, B-218723, et al., May 9, 1985, 85-1 C.P.D. ¶ 521.

As Ginter has presented no errors of law or facts not considered in our prior decision, the decision is affirmed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel