

10/2/87



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Durable, Inc.--Reconsideration

File: B-228911.2

Date: December 31, 1987

DIGEST

Request for reconsideration that basically only reiterates previously-rejected arguments does not warrant reversal or modification of the prior decision.

DECISION

Durable, Inc. requests reconsideration of our decision, Durable, Inc., B-228911, Nov. 3, 1987, 87-2 CPD ¶ _____, denying its protest of the award of a construction contract to Artco Contracting, Inc. for airfield apron improvements at Wurtsmith Air Force Base, Michigan, pursuant to invitation for bids (IFB) No. DACA45-87-B-0061, issued by the Army Corps of Engineers, Omaha, Nebraska.

We deny the request for reconsideration of our prior decision.

Briefly, the IFB required that the successful contractor remove existing concrete and asphalt paving at the airfield and place new 20-inch thick concrete slab paving along with a water line, storm drain, and a fuel system and line, and to perform related earthwork. The IFB's bid schedule called for bidders to submit prices on either items 1, 2, and 3 (alternate 1), or items 1, 2, 3A and 3B (alternate 2). The solicitation stated that alternate bids would not be considered unless the solicitation authorized their submission. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-18 (1986). In this regard, the solicitation stated that bidders must "enter [prices only for] alternate 1 or alternate 2 of the bid schedule."

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Contrary to the solicitation's instructions, Artco submitted bids for both alternate 1 and alternate 2. The Army awarded the contract to Artco on the basis of its alternate 1 bid. Durable then protested to our Office.

In its protest, Durable argued that Artco's bid was non-responsive because Artco had submitted two alternate bids; Durable noted that if Artco had complied with the solicitation's instructions and had chosen to bid on alternate 2 only, then Artco would not have been the low bidder.

Our prior decision explained that a bid, to be responsive, must represent an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. See Hicklin GM Power Co., B-222538, Aug. 5, 1986, 86-2 CPD ¶ 153. We also noted that our Office has consistently held that even where a solicitation does not provide for alternate bidding, but a bidder nevertheless submits a bid offering alternatives that meet the specifications, the government is not precluded from accepting one of the alternate bids that meets the solicitation requirements. See P&N Construction Co., 56 Comp. Gen. 328 (1977), 77-1 CPD ¶ 88; L.B. Foster Co., B-222593, Aug. 18, 1986, 86-2 CPD ¶ 191; Educational Media, Inc., B-225457.2, May 12, 1987, 87-1 CPD ¶ 498.

We concluded that Artco, in its alternate 1 bid, unequivocally offered to perform the exact work required by the government without exception, and that Artco's alternate 2 bid did not detract from its unequivocal commitment under its alternate 1 bid. Accordingly, we upheld the Army's determination that Artco submitted a responsive bid on both alternates despite the provision in the solicitation which stated that only one alternate bid should be submitted.

In its request for reconsideration, Durable argues that our decision "incorrectly rules" that Artco submitted responsive bids despite the express provisions of the solicitation that only one alternate bid should be submitted. Durable maintains that our decision establishes an "important precedent" that rewards bidders "when they have refused to follow the rules of the game." (Durable essentially raised this same argument in its initial protest.) Durable also again argues that if Artco had been required to decide which bid alternate to submit, it may well have decided to bid on alternate 2 and then Durable would have been the low bidder.

We carefully considered these arguments in our prior decision. Durable's repetition of its earlier arguments shows that it simply disagrees with many of the conclusions in our prior decision; however, mere disagreement or

reiteration of previously-rejected positions does not provide a basis for reconsideration. Sony Corporation of America--Reconsideration, B-225512.3, Apr. 10, 1987, 87-1 CPD ¶ 397. We therefore will not address these arguments again.

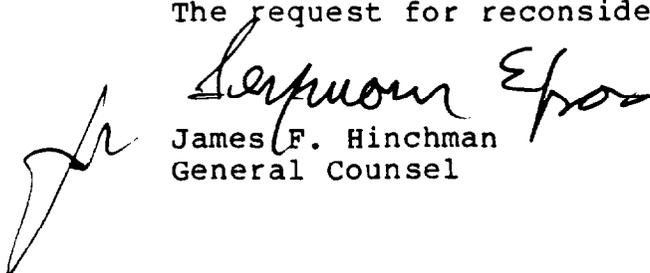
Next, Durable, in its protest, argued that the Artco bid for alternate 1 was mathematically and materially unbalanced. In this regard, Artco had admitted that its bid for item 3 of the schedule (portland cement) represented "the cost of cement only" and did not contain other elements of required cement work like delivery and storage of the cement at the site. (The solicitation stated that the quantity of item 3 (portland cement) would be paid for at the contract unit price which includes all costs of handling, hauling and storage at the site.) Durable argued that Artco's admission that it shifted some costs from item 3 to other items conclusively demonstrated that the Artco bid was mathematically unbalanced.

In our decision, we stated that, despite the assertions by Durable, a bid is not mathematically unbalanced unless it contains both understated prices for some work and overstated prices for other work. See Microform, Inc.--Reconsideration, B-208117.2, Sept. 27, 1983, 83-2 CPD ¶ 380; IMPISA International, Inc., B-221903, June 2, 1986, 86-1 CPD ¶ 506. Further, we stated that while Artco may have shifted some cement costs to other items of its bid, it did not appear from the record that this caused enhancement of other prices. Specifically, of five bids received, Artco submitted the second lowest bid for item 1 and the lowest bid for item 2; we therefore could not conclude that Artco significantly overstated prices for work other than for item 3. Accordingly, we found that Artco's bid was not mathematically unbalanced.

In its request for reconsideration, Durable again repeats arguments made in its protest. Specifically, Durable again notes that the agency's technical review team initially considered Artco's bid (as well as other bids) as "highly out of balance." Durable argues that the cement delivery costs shifted by Artco were significant, amounting to 10 to 20 percent of the total cement costs, or approximately \$50,000 to \$100,000. Once again, these facts and arguments essentially were considered in our prior decision and do not provide a basis for reconsideration. Sony Corporation of America--Reconsideration, B-225512.3, supra. Moreover, the undisputed fact remains that Artco's bid for the other items

does not itself reflect any overstated prices, but rather, was low or second low of five bids received. Accordingly, we are not persuaded that we erred in our prior decision in concluding that the Artco bid was not mathematically unbalanced.

The request for reconsideration is denied.



James F. Hinchman
General Counsel