



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Noslot Cleaning Services, Inc.--Request for
Reconsideration
File: B-228538.2
Date: April 4, 1988

DIGEST

Request for reconsideration is denied where there is no showing that prior decision may have been based on legal or factual errors.

DECISION

Noslot Cleaning Services, Inc., requests reconsideration of our decision in Noslot Cleaning Services, Inc., B-228538, Jan. 21, 1988, 88-1 CPD ¶ 58, wherein we denied Noslot's protest that all bids but its own apparent high bid should be rejected as nonresponsive under General Services Administration (GSA) invitation for bids (IFB) No. GS-11P-87-MJC-0107. We deny the request for reconsideration.

In its protest, Noslot argued that an irrevocable letter of credit provided by J&L Janitorial Services, Inc., did not satisfy the solicitation requirement for a bid guarantee because its intent was to guarantee performance of the contract, not to guarantee the bid. We held in our decision, however, that notwithstanding a reference in the letter of credit to guaranteeing "performance under contract(s)," the clear intent of the letter, when read as a whole, was to cover those matters encompassed by a bid guarantee. The letter explicitly guaranteed payment of up to 20 percent of J&L's bid amount "according to the terms and conditions" of the solicitation. The IFB referred to provided that if the bidder fails to execute the required contractual documents or furnish the required bonds, the agency may terminate the contract for default and use the bid guarantee to offset any excess costs of procurement. We thus found that, through incorporation by reference, the

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letter constituted an irrevocable promise to honor the agency's demands for payment should collection under the bid guarantee become necessary, and therefore was fully responsive to the solicitation.

In its request for reconsideration, Noslot reiterates its earlier objection to acceptance of the letter of credit as a bid guarantee, arguing that J&L's letter of credit "makes no specific reference to being a bid guarantee." As explained above, however, the letter incorporated by reference the terms and conditions of the solicitation, including the provisions setting forth the terms and conditions required for a bid guarantee to be considered responsive. Noslot's reiteration of this argument does not demonstrate any error of law or fact in our prior decision and thus does not warrant reconsideration. 4 C.F.R. § 21.12(a) (1987).

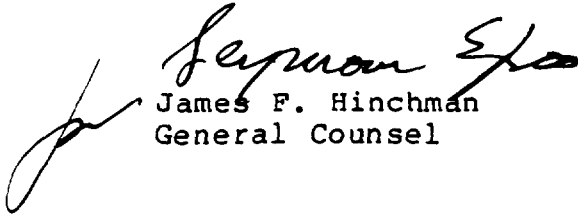
Noslot also argues that since the solicitation provides that a letter of credit can only be accepted in connection with a bid guarantee, it was improper for GSA to accept a letter of credit to guarantee both J&L's bid and its performance under the contract. This argument also provides no basis for reconsidering our decision. As indicated above, the letter of credit met the requirements for a responsive bid guarantee. Whether the letter of credit also could have satisfied the performance bond requirement has no bearing on the responsiveness of the bid, since responsiveness is determined as of the time of bid opening, Flex-Key Corp., B-229630, Dec. 10, 1987, 87-2 CPD ¶ 580, and the performance bond here only had to be submitted by the successful offeror after award. (Whether the awardee submits a performance bond after award as required is a matter of contract administration not for review by the General Accounting Office. MARCOR of California, Inc., B-228138, Oct. 27, 1987, 87-2 CPD 401.)

In its request for reconsideration, Noslot also challenges for the first time the qualifications of the firm which issued J&L's letter of credit. This argument is untimely. A protester may not raise a new ground of protest in a request for reconsideration that could and should have been raised in its original protest; our Bid Protest Regulations do not contemplate the piecemeal development of protest issues. See 4 C.F.R. § 21.2(a)(1); The W. H. Smith Hardware Co.--Request for Reconsideration, B-219327.5, Oct. 30, 1985, 85-2 CPD ¶ 488.

Since Noslot's protest with respect to J&L (whose fourth low bid is in line for award) is without merit, we will not consider Noslot's renewed objections to the acceptability of the fifth low bid submitted by Housekeeper Maintenance Service & Supply Co. As we held in our prior decision,

Noslot is not an interested party to challenge Housekeeper's bid because Noslot would not be in line for award even if we sustained its protest with regard to Housekeeper. 4 C.F.R. § 21.0; see Kellogg Plant Services, Inc., B-227689.3, Nov. 24, 1987, 87-2 CPD ¶ 510.

As Noslot has not presented evidence that our original decision may have been based on legal or factual errors, the request for reconsideration is denied.



James F. Hinchman
General Counsel