

Ruppert



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.--Reconsideration
File: B-239681.2
Date: January 29, 1991

Bob Stormberg for the protester.
George Ruppert, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision may contain either errors of fact or law or to present information not previously considered that warrants reversal or modification of our decision; repetition of arguments made during consideration of the original protest and mere disagreement with decision do not meet this standard.
2. Bid offering to furnish compliant item was properly found responsive notwithstanding post-bid opening notice from bidder that manufacturer named in bid does not manufacture compliant item; whether a bid is responsive and therefore eligible for award must be determined from contents of the bid itself at bid opening, without reference to information submitted after bid opening.

DECISION

Adrian Supply Co. requests reconsideration of our decision, Adrian Supply Co., B-239681, Aug. 28, 1990, 90-2 CPD ¶ 170, in which we denied its protest against the Department of the Air Force's award of a contract to Industrial Electric Supply Company (IES), under invitation for bids No. F40650-90-B-0017, for high voltage circuit breakers.

We deny the request for reconsideration.

Adrian originally protested that a post-bid opening letter in which IES informed the agency that the manufacturer named in the Place of Performance Clause in its bid did not manufacture items conforming to the specification, and that IES therefore would furnish items from a different manufacturer, rendered

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IES' bid nonresponsive; the bid as submitted was not based on furnishing items meeting the IFB requirements. We denied the protest on the grounds that the bid was responsive based on IES' unqualified agreement to furnish a compliant item in its bid as submitted, and that the changed information as to its intended manufacturer related only to the manner in which IES would perform, which concerns bidder responsibility and can be established after bid opening, not the acceptability of the bid itself. See Southern Ambulance Builders, Inc., B-236615, Oct. 26, 1989, 89-2 CPD ¶ 385; Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

In its request for reconsideration, Adrian generally repeats arguments it made previously and expresses disagreement with our decision. Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1990). The repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

In addition to reiterating its previously-raised arguments, Adrian argues that we exceeded our statutory mandate and modified "the intent of [the procurement] statutes and regulations" by limiting the determination of responsiveness to consideration of the bid as submitted.

Adrian refers to Federal Acquisition Regulation (FAR) § 14.301(a), which requires bids to "comply in all material respects with the invitation for bids" to be considered for award, and notes that there is no stated requirement that bid responsiveness be based on the bid as submitted. Although the FAR does not explicitly recite that requirement, it is a long-established, fundamental procurement principle that whether a bid is responsive and therefore eligible for award must be determined from the contents of the bid itself at bid opening, without reference to extraneous aids or explanations submitted after bid opening. Colorado Container Corp., B-238670, May 31, 1990, 90-1 CPD ¶ 514; NJCT Corp., B-216919, Jan. 11, 1985, 85-1 CPD ¶ 33; McGraw-Edison Co., B-181473, Feb. 13, 1975, 75-1 CPD ¶ 95; 17 Comp. Gen. 554 (1938). This principle, which is uniformly followed not only by this Office, but also by the courts and other forums that have considered bid responsiveness issues, see, e.g., Rochester v. United States Environmental Protection Agency, 496 F. Supp. 751 (D. Minn. 1980); Mack Trucks, Inc. v. United States, 6 Ct. Cl. 68 (1984); Southwestern Bell Corp., GSBGA No. 10321-P, 90-1 BCA ¶ 22,545, reflects the concern that the opposite approach would adversely affect the integrity of the

competitive bidding system by allowing bidders, after all bids had been exposed, to decide whether or not to have their bids rejected. Veterans Admin. re Welch Constr., Inc., B-183173, Mar. 11, 1975, 75-1 CPD ¶ 146; 38 Comp. Gen. 532 (1959).

Adrian further asserts that FAR § 14.404-2, "Rejection of individual bids," separately requires rejection of the IES bid. According to Adrian, to be accepted, a bid has to pass two separate and distinct tests: it must be responsive under FAR § 14.301, and it must not be subject to rejection under FAR § 14.404-2. Adrian believes that under this latter section the IES bid was subject to rejection when IES, after bid opening, informed the Air Force that the manufacturer identified in its bid did not manufacture a conforming item.

There is no merit to Adrian's position. FAR § 14.404-2 sets forth several bases for rejecting a bid. The first four bases involve nonconforming, and therefore nonresponsive, bids. Others include situations where the bidder is not responsible or is suspended or debarred and where the bidder's assets, after bid opening, are transferred to another entity. Contrary to what Adrian asserts, the fact that this section encompasses situations--such as nonresponsibility--where information developed after bid opening is used does not change the fundamental rule that the responsiveness of a bid is determined on the basis of the bid itself at the time of bid opening. In other words, FAR § 14.404-2(a) does not establish a responsiveness requirement independent of that in FAR § 14.301(a); it provides only for the rejection of bids that, at the time of bid opening, were nonconforming to a material requirement. As we held initially, we believe that IES committed itself in its bid to all material requirements, and that the change of manufacturers was a permissible change because it concerned IES' responsibility.

The request for reconsideration is denied.


James F. Hinchman
General Counsel