



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Terra Vac, Inc.--Reconsideration

File: B-241643.2

Date: June 21, 1991

Alan M. Klinger, Esq., Stroock & Stroock & Lavan, for the protester.

Richard B. Golden, Esq., Norton & Christensen, for Moretrench Environmental Services, an interested party.

Paul M. Fisher, Esq., Department of the Navy, for the agency. Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester does not show any error of fact or law, or present information not previously considered, that would warrant reversal or modification of our decision that agency properly rejected protester's bid as nonresponsive because of an ambiguity with respect to compliance with the required completion schedule.

DECISION

Terra Vac, Inc. requests reconsideration of our decision, Terra Vac, Inc., B-241643, Feb. 7, 1991, 91-1 CPD ¶ 140, wherein we denied Terra Vac's protest against the agency's rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62472-90-B-5338, issued by the Department of the Navy for construction, start-up, and prove-out of a ground water withdrawal and treatment system.

We deny the request for reconsideration.

The IFB, as originally issued, required contract completion not later than 604 days after the date set for commencement of work; amendment 0002 revised the completion schedule to 374 days after the date for commencement of work. Terra Vac's bid was rejected as nonresponsive because it included a chart showing a 414-day completion schedule. In its protest, Terra Vac complained that, since it acknowledged amendment 0002 containing the revised 374-day completion schedule, this schedule superseded the 414-day completion schedule submitted with its bid, which the protester claims in

a post-bid-opening affidavit was prepared prior to its acknowledgment of amendment 0002.

We denied the protest, holding that Terra Vac's bid did not unequivocally bind the firm to perform in accordance with the 374-day schedule in amendment 0002. We stated that even though Terra Vac acknowledged amendment 0002, which shortened the project completion schedule, in its undated bid form, the chart showing a 414-day completion schedule in accordance with the IFB's original, longer delivery schedule, created doubt as to whether Terra Vac intended to bind itself to deliver in accordance with the completion schedule as amended. Since the bid itself contained no other indication that the 374-day schedule was intended to be controlling and Terra Vac's post-bid-opening statement could not be used to establish its intent to be bound by the 374-day completion schedule, we found Terra Vac's bid was ambiguous and therefore properly rejected as nonresponsive.

In its request for reconsideration, Terra Vac reiterates its argument that its bid should be considered responsive in accordance with our decision in Alaska Mechanical, Inc., B-225260.2, Feb. 25, 1987, 87-1 CPD ¶ 216. Again, specifically, Terra Vac asserts that here, as in Alaska, there is only one reasonable interpretation of its bid, namely, that as stated in its post-bid-opening affidavit, the 374-day completion schedule acknowledged in amendment 0002 superseded the 414-day schedule mistakenly included in its bid, because the firm acknowledged the shorter schedule subsequent to preparing the longer schedule. Terra Vac alleges that since nothing in the record contradicts its affidavit containing this information, we should have considered its contents instead of disregarding it as a post-bid-opening statement.

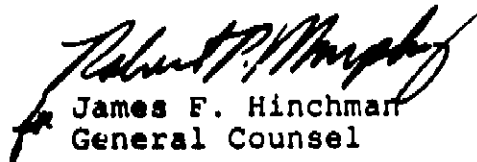
A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of our prior decision is deemed warranted and must specify any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1991). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Sal Esparza, Inc.--Recon., B-231097.2, Dec. 27, 1988, 88-2 CPD ¶ 624.

Terra Vac's reconsideration request merely repeats contentions previously raised and considered in our prior decision. In that decision, we specifically found that Alaska was inapposite here. In Alaska, the solicitation as issued required a minimum bid acceptance period of 60 calendar days. A subsequent amendment changed the minimum bid acceptance period to 90 days. Although the bidder acknowledged the amendment, it also inserted 60 calendar days as the acceptance

period in its bid, which led in the agency to reject the bid as nonresponsive for containing an ambiguity. We disagreed with the agency; we found that the bidder had unambiguously offered the required acceptance period. Since the 60-day period inserted by the bidder corresponded to that initially required, we concluded that there was sufficient evidence it had been inserted prior to issuance of the amendment and that the bidder's subsequent acknowledgment of the amendment thus indicated an intent to comply with the 90-day acceptance period. See RG&B Contractors, Inc.--Recon., B-225260.4; B-225260.5, Apr. 20, 1987, 87-1 CPD ¶ 425.

In contrast, the 414-day completion schedule inserted in Terra Vac's bid corresponded neither to the initially required 604-day completion schedule, nor to the subsequent, revised 374-day completion schedule. Since it was unclear whether the 414-day schedule had been prepared before or after issuance of the amendment containing the 374-day schedule, the fact that Terra Vac had also acknowledged the amendment did not evidence an unambiguous intent to comply with the revised 374-day schedule. In order to resolve this ambiguity with respect to its intent to comply with the required delivery schedule, Terra Vac relies upon a post-bid-opening statement, which we held could not be used to establish which of two conflicting completion schedules the bidder intended, because post-bid-opening statements are insufficient to establish intent to be bound by an IFB's requirements. The fact that nothing in the record contradicts Terra Vac's post-bid-opening affidavit does not change the fact that subsequent explanations cannot be used to render an ambiguous bid responsive.

Terra Vac has not established any mistake of fact or law in our previous decision. Accordingly, the request for reconsideration is denied.


James F. Hinchman
General Counsel