

145675



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

Decision

Matter of: Adrian Supply Company--Reconsideration

File: B-243904.3

Date: January 16, 1992

Bob Stormberg for the protester,
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Request for reconsideration is denied where the protester
has not shown that our prior decision contains either errors
of fact or law, and the protester merely disagrees with our
prior decision.

DECISION

Adrian Supply Company requests reconsideration of our
decision, Adrian Supply Co., B-243904; B-243904.2, Aug. 7,
1991, 91-2 CPD ¶ 140. In that decision, we denied Adrian's
protest challenging the rejection of its bid as late and as
nonresponsive under invitation for bids (IFB)
No. F61040-90-B-0001, issued by the Department of the Air
Force, Lajes Field, Azores, Portugal, for various types of
transformers.

We deny the request for reconsideration.

The solicitation, issued on November 2, 1990, required bids
to be addressed to the Operational Contracting Division,
1605 MASW/LGC, APO New York 09406-5320, or if handcarried,
delivered to the depository in Building T-615, Room 201,
Lajes Field, Azores, by bid opening on January 2, 1991. The
solicitation specifically warned all bidders that mailing
time from the United States to the Azores would take from 10
to 15 days.

On December 20, 1990, Adrian mailed its bid to the agency at
the APO address given in the solicitation. The agency at
Lajes Field, Azores received Adrian's bid on January 2,
1991. Prior to the initially scheduled bid opening,
however, the agency twice amended the solicitation, making
material changes to its requirements and ultimately
extending bid opening until February 28. On February 19,

8 days after having received on February 11 the solicitation amendments, Adrian mailed its bid modification and amendment acknowledgments to the agency at the APO address given in the solicitation. The agency at Lajes Field, Azores received these documents on March 20, 20 days after bid opening. The agency rejected Adrian's bid as nonresponsive because Adrian failed to acknowledge material amendments to the solicitation by bid opening. Adrian protested the agency's rejection of its bid.

In our decision, we held that the agency properly rejected as late and properly did not consider Adrian's bid modification and amendment acknowledgments because, although these documents were received at the APO address given in the solicitation prior to bid opening, the APO address was merely an intermediate stop in transit and was not the ultimate destination for receipt of bids or the place of public bid opening, specifically, the designated contracting office in the Azores. We also concluded that while overseas mail deliveries, including those to the Azores, were delayed because of Operation Desert Shield and Operation Desert Storm, that Adrian directly contributed to the delay in the agency's receipt by bid opening of its bid modification and amendment acknowledgments because it mailed these documents only 9 days prior to bid opening, in contravention of the solicitation's minimum mailing time provision. Finally, we held that since Adrian properly was determined nonresponsive, it lacked the direct economic interest necessary to qualify as an interested party to challenge the acceptability of the awardee's bid because it was not in line for award even if its allegations concerning the awardee's bid were sustained.

In its request for reconsideration, Adrian expresses disagreement with our decision and maintains that the agency should have accepted for award its late bid modification and amendment acknowledgments. In this regard, Adrian argues that it does not matter that it mailed these documents less than 10 days prior to bid opening since even if it had satisfied the solicitation's minimum mailing time provision, these documents would not have reached the designated contracting office in the Azores by bid opening because mail from the United States to the Azores took up to 30 days in some instances to deliver during Operation Desert Shield and Operation Desert Storm. Adrian also continues to argue, based on its belief that there was a lack of competition for this acquisition, that it is an interested party to challenge the acceptability of the awardee's bid.

Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1991), 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. Here, Adrian's repetition of arguments made during our consideration of its original protest and its mere disagreement with our decision do not meet this standard. Interior Elements, Inc.--Recon., B-238117.2, Aug. 17, 1990, 90-2 CPD ¶ 139; R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

With respect to the minimum mailing time provision, the record shows that while there were instances during the period between the issuance of the solicitation amendments and bid opening, as a result of Operation Desert Shield and Operation Desert Storm, in which mail deliveries from the United States to the Azores took more than 15 days, the overseas mail deliveries still averaged approximately 13 days. The record contains no evidence showing that overseas mail deliveries from the United States to the Azores were delayed in all instances by any uniform length of time which would have indicated that the solicitation's minimum mailing time provision was incorrect or misleading. We therefore believe the solicitation's minimum mailing time provision accurately reflected the minimum number of days which a bidder should have allowed for mailing its bid from the United States to the Azores in order to ensure timely receipt by the agency by bid opening.


Thus, since the agency specifically included a notice in the solicitation warning all bidders to allow at least 10 to 15 days to mail their bids from the United States to the Azores, in our view, firms like Adrian which ignored the solicitation's minimum mailing time provision reasonably could be deemed to have materially contributed to the agency's late receipt of their bids. Adrian, despite the solicitation's minimum mailing time provision, chose to mail its bid modification and amendment acknowledgments with insufficient mailing time remaining, rather than arranging for hand delivery of these documents by courier service.¹ While it may be true that under the circumstances even allowing the minimum mailing time would not have guaranteed the receipt of a firm's bid at the designated contracting office in the Azores by bid opening, firms like Adrian which

¹We note that even allowing less than the minimum mailing time, Adrian, consistent with the solicitation which allowed for handcarried bids, could have timely delivered its bid modification and amendment acknowledgments to the agency's bid opening office in the Azores by using an international courier service. The record shows that the second low bidder, a Texas firm, used an international courier service which timely delivered its bid from the United States to the designated contracting office in the Azores in just 4 days.

did not allow even the minimum mailing time cannot complain of prejudice due to the agency's failure to notify them of the mail delays. We therefore conclude that the agency properly rejected Adrian's bid as late and as nonresponsive.

With respect to Adrian's interested party argument, the record shows that six firms participated in the competition for this acquisition. While the agency ultimately determined that four of these firms, including Adrian, were nonresponsive because of late delivery of their bid modifications and amendment acknowledgments, the agency also determined that the remaining two firms--respectively, the apparent low and second low bidders--were responsive and otherwise eligible for award. As stated in our prior decision, because Adrian was properly determined nonresponsive and could not be considered in line for award, it lacked the direct economic interest necessary to be considered an interested party eligible to protest the acceptability of the awardee's bid. Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.0(a)). Only the second low bidder had the direct economic interest necessary to challenge the acceptability of the awardee's bid, and the record shows that this firm chose not to do so.

Accordingly, the request for reconsideration is denied.


James F. Hinchman
General Counsel