



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Hampton Roads Leasing, Inc.--Reconsideration

**File:** B-244887.2

**Date:** April 1, 1992

David A. Hearne, Esq., Outland, Gray, O'Keefe & Hubbard, for the protester.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest allegation was properly dismissed as abandoned where the agency responded in detail to the protest allegation and the protester failed to reply to the agency's response.

2. The protester may not raise new grounds of protest concerning the responsiveness of the awardee's bid in its comments after being provided with the awardee's bid in the agency's report on the initial protest, where the protester had reviewed the awardee's bid at bid opening and only protested the bid was nonresponsive for certain other reasons.

### DECISION

Hampton Roads Leasing, Inc. requests reconsideration of our decision in Hampton Rds. Leasing, Inc., B-244887, Nov. 25, 1991, 71 Comp. Gen. \_\_\_\_, 91-2 CPD ¶ 490, in which we denied Hampton Roads's protest of the Department of the Navy's award of a contract to Link-Belt Construction Equipment Company, under invitation for bids (IFB) No. N62470-90-B-7074, for cranes for the Norfolk Shipyard, Portsmouth, Virginia.

We deny the request for reconsideration.

The IFB contemplated the award of a contract for the purchase of a mobile hydraulic lattice boom crane with options to: (1) purchase a second crane, (2) lease a third

crane for 12 months,<sup>1</sup> and (3) purchase the leased crane at the expiration of the lease. Offerors were required to provide their pricing for the basic and option requirements and were informed that award would be made to the responsible, responsive bidder with the lowest total price for the base and option items.

At the June 7, 1991, bid opening, the Navy received five bids. Link-Belt's low bid was \$2,030,788, while Hampton Roads's second low bid was \$2,064,001. Hampton Roads's president reviewed Link-Belt's low bid at bid opening. Award was made to Link-Belt on July 16, and Hampton Roads protested on July 22.

Hampton Roads argued in its initial protest letter that Link-Belt's bid was nonresponsive because the awardee (1) included with its bid unsolicited descriptive literature that qualified its bid and (2) in addition to providing the required pricing for the option to lease the crane for 12 months, also provided lower monthly rates for the lease of the crane for months 13 through 60. After receipt of the agency's report on the protest, which included a copy of Link-Belt's bid, Hampton Roads argued, for the first time in its comments, that the awardee's bid was nonresponsive because Link-Belt ambiguously provided for the application of lease payments to the purchase price of the crane and because the firm failed to date its signed Certificate of Procurement Integrity.

We found in our prior decision that the reservation of the right to change product design and specifications contained in Link-Belt's unsolicited descriptive literature did not render Link-Belt's bid nonresponsive where the awardee did not incorporate the literature into its bid or otherwise describe in its bid the same product model contained in the literature.<sup>2</sup> We also found that Hampton Roads had abandoned its protest allegation that Link-Belt's provision of lower lease payments for the crane for months 13 through 60 rendered the bid nonresponsive, because the agency responded in detail to this allegation and Hampton Roads failed to reply, in any way, to this allegation in its comments to the Navy's response. Finally, we dismissed Hampton Roads's

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<sup>1</sup>Offerors were informed that the government reserved the option of extending the lease of the crane for up to an additional 48 months. In our prior decision, we mistakenly stated that the option period was an additional 24 months.

<sup>2</sup>Hampton Roads does not disagree with that part of our decision that denied its allegation that the awardee's unsolicited descriptive literature qualified that firm's bid.

allegations concerning the awardee's provision for application of lease payments to the purchase price of the crane and the awardee's failure to sign the Certificate of Procurement Integrity because the protester knew or should have known the basis for these allegations based on its review of the bid at bid opening and should have made these allegations at the time it filed its initial protest in order to be timely under our Bid Protest Regulations, ; C.F.R. § 21.2(a)(2) (1991).

Hampton Roads first argues on reconsideration that we erred in determining that the protester had abandoned its protest allegation concerning the awardee's offer of lower lease payments for the crane in months 13 through 60. The protester contends that the agency did not respond to this protest allegation, as we found in our prior decision, and that, in fact, the agency acknowledged the ambiguity of the awardee's bid in this matter. Thus, Hampton Roads argues that it had no obligation to further address this issue in its comments.

The protester's assertion that the agency did not respond to this allegation is incorrect. The agency in its report specifically responded by explaining why it did not view Link-Belt's note to be nonresponsive or ambiguous. The agency stated that Link-Belt, as required by the IFB, offered a firm price for the first year lease and also offered more favorable terms for lease payments for months 13 through 60, in the event the government exercised its right to extend the lease. Since the awardee's price for these additional months was also firm and unambiguous, the Navy concluded that Link-Belt's bid would be low regardless of whether or not the agency evaluated the more favorable lease terms.

Hampton Roads argues that, in any event, it addressed this issue "in its written comments [by] repeatedly referr[ing] to Link-Belt's 'dual pricing.'" We can find no reference to "dual pricing" in any of Hampton Roads's comments. Moreover, the entire substance of Hampton Roads's comments dealt with its new issue--the awardee's provision for the application of the lease payments to the purchase price of the crane based upon a stated formula. Since Hampton Roads did not mention, reply or rebut in any way the Navy's detailed response to its allegation concerning the offering of additional lease terms, this issue was properly treated as

abandoned.<sup>3</sup> TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

Hampton Roads also argues on reconsideration that we erred in finding untimely its allegations concerning Link-Belt's provision of lease payments to the purchase price of the crane and the failure to date the Certificate of Procurement Integrity. Specifically, regarding its protest of the application of lease payments to the purchase price, Hampton Roads contends that its initial protest was "broad enough" to include this issue, since it was contained in the same bid notation as Link-Belt's offer of additional lease terms.<sup>4</sup>

We disagree that Hampton Roads's initial protest raised the issue of Link-Belt's application of lease payments to the purchase price of the crane. The protester's initial protest submission very specifically only objected to Link-Belt's lease term provisions (and descriptive literature notation), despite the fact that the application of the lease payments to the purchase price was contained in the same notation in Link-Belt's bid. While it is true that Hampton Roads protested that Link-Belt's bid was nonresponsive, this does not mean that the protester raised all possible protest bases for the nonresponsiveness assertion. It was the protester's duty to set forth a detailed statement of all legal and factual grounds of protest. 4 C.F.R. § 21.1(b)(4) (1991). Hampton Roads timely raised specific allegations as to why Link-Belt's bid was nonresponsive, but these allegations, as we noted in our prior decision, are different from those it raised in its comments on the report. Hampton Roads itself recognized this distinction by characterizing its new objections in its comments as "additional and supplemental" protest grounds.

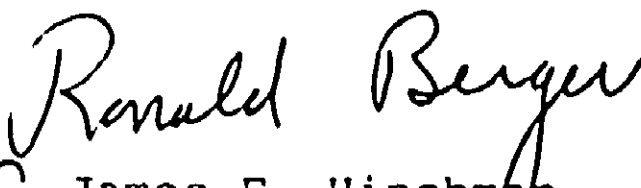
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<sup>3</sup>The protester suggests that it could have requested that this case be decided on the existing record. While this is true, the protester did not make this request, thereby leaving the implication that it was satisfied with the agency's detailed explanation. Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(j)).

<sup>4</sup>Hampton Roads does not contend that its initial protest was "broad enough" to have raised the allegation that Link-Belt's failure to date its signed Certificate of Procurement Integrity rendered the awardee's bid nonresponsive. In any case, we have found the failure to date a signed Certificate of Procurement Integrity was properly waivable as a minor informality where, as here, the certification's applicability to the particular bid is clear. C.B.C. Enters., Inc., B-246235, Oct. 31, 1991, 91-2 CPD ¶ 416.

Hampton Roads argues that it was unreasonable to require the protester to raise all its protest allegations in its initial protest letter since it did not have a full opportunity to review Link-Belt's bid at bid opening. Hampton Roads contends that it should be allowed to raise new protest issues that it learned when it received Link-Belt's bid with the agency report on its initial protest. Hampton Roads's president admits in an affidavit that the agency afforded him the opportunity to review, and he did review, Link-Belt's bid at bid opening. The president alleges, however, that he did not have sufficient time to review all of the bid because he "was the first representative in the line to review all bid documents and was hurried by the other bidders' representatives waiting in line behind me." There is no allegation that the agency did not provide the bidder with a full opportunity to review the bid, and the fact that the protester may have been hurried by other bidders does not excuse its failure to fully review the bid to discover all its protest grounds. Therefore, Hampton Roads' unwarranted piecemeal presentation of these protest issues was properly dismissed as untimely.<sup>5</sup> See Armstrong Motorcycles Ltd., supra.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel

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<sup>5</sup>The protester also argues that our decision will require bidders to attend bid opening and review bids. We disagree. There is no requirement that bidders attend bid opening. However, where, as here, a protester attends bid opening and reviews the awardee's bid, the protester has notice, or should have notice, of its protest grounds based on the awardee's bid from the date of bid opening. Thus, the protester was required to protest within 10 days of when it was apprised that the agency would accept the awardee's bid, as Hampton Roads did regarding the other alleged discrepancies in the awardee's bid. See Armstrong Motorcycles Ltd., B-238436; B-238436.2, June 5, 1990, 90-1 CPD ¶ 531.