



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: King-Fisher Co.--Reconsideration

File: B-257673.2

Date: June 13, 1995

DECISION

King-Fisher Company requests reconsideration of our dismissal of its protest of the award of a contract to Monaco Enterprises under invitation for bids (IFB) No. IB 13633-4E, issued by Hercules, Inc., for the rehabilitation of the fire alarm system in area 2 of the Naval Weapons Industrial Reserve Plant (NWIRP) at McGregor, Texas. King-Fisher protested that Monaco's bid should have been declared nonresponsive because the actual bid amount could not be determined from the face of the bid. We dismissed King-Fisher's protest because it did not appear to involve any of the limited circumstances under which we review challenges to subcontract awards. See 4 C.F.R. § 21.3(m) (10) (1995).

We deny the request for reconsideration.

Under the Competition in Contracting Act of 1984 (CICA), our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards that are issued "by a federal agency." 31 U.S.C. § 3551(1) (1988). In the context of subcontractor selections, we have interpreted the Act to authorize our Office to review protests only where, as a result of the government's involvement in the award process or the contractual relationship between the prime contractor and the government, the subcontract in effect is awarded on behalf of the government, that is, where the subcontract is awarded "by or for" the government. See Ocean Enters., Ltd., 65 Comp. Gen. 585 (1986), 86-1 CPD ¶ 479, aff'd, 65 Comp. Gen. 683 (1986), 86-2 CPD ¶ 10.¹

¹Our proposed Regulations implementing the Federal Acquisition Streamlining Act of 1994 does not provide for our exercise of this "by or for" jurisdiction. Under the proposed rule, our Office will consider protests concerning awards of subcontracts by or for a federal agency where the agency awarding the prime contract has requested in writing that subcontract protests be decided by our Office. 60 Fed. Reg. 5871, 5874 (1995) (to be codified at 4 C.F.R. § 21.5(h)).

While we understand that Hercules manages and operates the NWIRP for the government, the fire alarm system project was one assigned to Hercules under a separate construction contract. We generally do not review protests of the awards of subcontracts by construction contractors. See Barshfield Inc., B-235575, July 11, 1989, 89-2 CPD ¶ 33. King-Fisher, however, argues that Hercules is a construction management contractor, whose subcontract awards are subject to our jurisdiction.

It is not clear from the record whether Hercules acted as a construction management contractor. We deny the request for reconsideration, however, because if we were to reach the merits of the protest we would find it to be without merit.

The fire alarm system was procured under an IFB which contained a single bid item that was set forth on the bid schedule as follows:

Bid Amount	_____ Dollars	\$ _____
Materials to be incorporated into the structure or improvement upon real estate		\$ _____
Services and other obligations of construction contract		\$ _____
	TOTAL	\$ _____

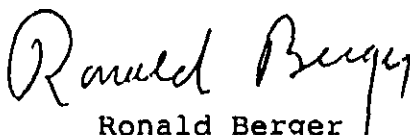
The IFB did not provide for separate purchase of the "Materials" or "Services" at the dollar amounts listed or that one category could be purchased without the other. As indicated by Article 77 of the IFB, separate price entries were sought for "Materials" and "Services" in connection with the bidder's individual tax liability for Texas state sales tax.

Monaco stated its "Bid Amount" as "\$189,915.00," which was the low bid. On the bid schedule, Monaco entered "-0-" for "Materials"; "\$3,200.00" for "Services"; and "\$3,200" for "TOTAL." King-Fisher, the second-low bidder, entered \$193,344 for its "Bid Amount," \$159,281 for "Materials" and \$34,063 for "Services" for a "TOTAL" of \$193,344. Prior to award, Hercules asked Monaco to verify its total bid and to clarify its breakdown of values between materials to be incorporated and services/obligations of construction and told Monaco that "the total must equal your bid of \$189,915.00." Monaco verified its bid, and revised its entries for "Materials" to \$133,920 and "Services" to \$55,995, which total \$189,915, the exact amount of Monaco's bid.

King-Fisher argues that Monaco's failure to properly complete the bid schedule in its bid rendered it nonresponsive. The test applied in determining responsiveness is whether the bid as submitted is an offer to perform without exception the exact thing called for in the solicitation and upon acceptance will bind the contractor to perform in accordance with all of the material terms and conditions of the solicitation. Bryant Organization, Inc., B-228204.2, Jan. 7, 1988, 88-1 CPD ¶ 10.

Here, the requested price breakdown was not material, but was merely used for informational purposes to determine the bidder's tax liability; this information did not affect the legal obligation among the bidder, Hercules, and the Navy,² and specifically did not affect the lump-sum bid price. Thus, Monaco's failure to properly enter the information does not in any way modify or limit its agreement to perform in accordance with all material terms and conditions of the IFB at its single lump-sum price bid, and is at most a waiveable minor informality. See American Spare Parts, Inc., B-224745, Jan. 2, 1987, 87-1 CPD ¶ 4; National Radio Co., Inc.; Bruno-New York Indus. Corp., B-198240, July 25, 1980, 80-2 CPD ¶ 67, aff'd, Andrea Radio Corp., B-198240, Sept. 2, 1980, 80-2 CPD ¶ 165. Therefore, Hercules properly accepted Monaco's bid.

The request for reconsideration is denied.



Ronald Berger
Associate General Counsel

²Monaco's initial entry of "\$3,200.00" on the line for "Services" is presumably the amount of tax Monaco calculated it would owe for the "Services" component of its bid amount.