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T. Wagner
Proc II

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-186030, B-186509 **DATE:** February 10, 1977

MATTER OF: Hampton Metropolitan Oil Co.; Utility Petroleum, Inc. (Reconsideration)

DIGEST:

Prior decision upholding agency's cancellation of portions of solicitation after bid opening is affirmed since it has not been shown that decision was based on errors of fact or law.

Hampton Metropolitan Oil Company has requested reconsideration of our decision in Hampton Metropolitan Oil Co.; Utility Petroleum, Inc., B-186030, B-186509, December 9, 1976, 76-2 CPD 471, in which we upheld the cancellation by the Defense Supply Agency (DSA) of the portions of invitation for bids (IFB) No. DSA600-76-B-003 on which Hampton and another firm were the apparent low bidders.

The IFB, which solicited bids for the furnishing of petroleum products, required bidders to submit a "reference" price to be used in connection with economic price adjustment provisions. The reference price could be either a company's "posted price" or a "published price." Although Hampton submitted its own posted prices as its reference prices, DSA believed that the Government would not be adequately protected by such reference prices because it appeared that Hampton did not have substantial commercial sales and therefore could increase its entitlements under the economic price adjustment provisions by indiscriminately raising its posted prices. However, because the IFB did not define what was intended by the terms "posted price" and "published price," the contracting officer concluded that Hampton could have been misled by the IFB into believing that it could tie its reference price to its posted price. He therefore decided to cancel the applicable portions of the IFB and to resolicit with an adequate description of what the Government required as an acceptable reference price. We held that the contracting officer's actions were not improper

In its request for reconsideration, Hampton states that it "was not misled" and that in any event it could not have raised

its prices indiscriminately because of the regulatory requirements imposed by the Federal Energy Administration (FEA).

With regard to the first point, Hampton suggests that it couldn't have been misled because it did what the majority of bidders did by utilizing its own posted prices for the required reference prices. It appears that Hampton was misled, however, because the contracting officer intended the term "posted price" to refer to a price maintained by a firm regularly selling to commercial customers in substantial quantities, even though the IFB did not so state. As indicated above, and unlike the majority of bidders, Hampton did not, insofar as the contracting officer was able to determine, have substantial commercial sales. In other words, Hampton's situation was different from that of most other bidders in that it could not utilize its posted prices as acceptable reference prices under the contracting officer's intended meaning of the term "posted price."

With respect to the second point, we stated the following in the original decision:

> "In regard to Hampton's contention that its price changes under the economic price adjustment clauses are controlled by FEA regulations, DSA states that such regulations only tie Hampton's price changes to inventory cost changes but do not control the costs which Hampton could incur to replenish its inventory. DSA points out that since Hampton has no commercial customers, it would be under no threat of loss of business if its future inventory acquisition costs result in selling prices higher than what competitive pressures normally would permit. Accordingly, DSA believes that Hampton would not have sufficient competitive pressure to hold its prices in line with the market.
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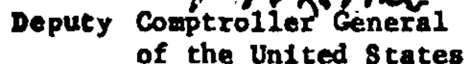
> "Although Hampton argues that since its margin is fixed by FEA regulations it would not be practical to increase its inventory costs solely to receive a higher price from the Government because its return on investment would be reduced, we think DSA's insistence on the threat of competition in the marketplace as the only reasonable assurance for

its contractors to keep their reference ('posted') prices as low as possible is reasonable. Furthermore, as DSA points out, the FEA regulations concern only ceiling prices and do not preclude a seller from raising prices until that ceiling is reached. Moreover, the regulations could be modified or rescinded at any time, and as Hampton would not be contractually bound to adhere to the FEA regulations existing at the time of bid opening, the Government would not have the protection it seeks by acceptance of Hampton's bid, should those regulations actually change."

Hampton has not shown why the above-quoted statement is erroneous. Essentially Hampton merely reiterates its contention, made in its original protest, that FEA's regulations would have kept Hampton from raising its prices.

Section 20.9 of our Bid Protest Procedures, which provides for reconsideration of a decision, requires that requests for reconsideration "contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made * * *." 4 C.F.R. § 20.9(a) (1976). Since Hampton has not shown that our prior conclusion with respect to the effect of FEA's regulations is legally erroneous, we see no reason to further consider the matter.

The prior decision is affirmed.



Deputy Comptroller General
of the United States