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

**DECISION**



FILE: B-203589.2

DATE: November 2, 1981

MATTER OF: AMS Manufacturing, Inc.--  
Reconsideration

**DIGEST:**

Prior decision, denying the protest, is affirmed where the protester does not show that the decision contains any error of fact or law.

AMS Manufacturing, Inc. (AMS), requests reconsideration of our decision in the matter of AMS Manufacturing, Inc., B-203589, September 2, 1981, 81-2 CPD 195, wherein we denied its protest.

The United States Army Armament Materiel Readiness Command (Army), Rock Island, Illinois, issued invitation for bids (IFB) No. DAAA09-81-B-0049 to procure 274,054 lifting plugs for use on four different types of projectiles. The AMS bid was the fourth lowest bid. In its protest to our Office, AMS argued that the two lowest bids (Solar Flame, Inc., H/R Products, Inc.) were nonresponsive for failure to comply with the IFB's "Surge Option for Increased Quantity" provision.

Since the third low bidder's small business size status had been referred to the Small Business Administration, we considered only whether the Solar Flame and H/R Products bids were responsive. Because the Surge Option provision was not being evaluated in determining the awardee, there was no option price ceiling and nothing in the IFB indicated that an offer for the Surge Option was mandatory, we concluded that the failure to comply was not a material deviation requiring bid rejection. We also held that, contrary to AMS's assertion, a bidder which did not offer the Surge Option did not obtain an unfair competitive advantage.

On reconsideration, AMS focuses on our conclusion that the failure to bid on the Surge Option provision did not render the two lowest bids nonresponsive.

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While AMS has not shown that our prior decision contains any error of fact or law, we will clarify the decision since it appears that AMS does not understand the basis for the decision.

AMS has implied that the Surge Option quantities are firm contractual requirements rather than option quantities. However, the Surge Option provision clearly falls within the "option" definition in Defense Acquisition Regulation (DAR) § 1-1501 (1976 ed.)--"a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract."

AMS also argues that, by allowing a bidder to decide whether to offer the Surge Option quantities, the bidder limits the Government's contract rights. AMS notes that DAR § 2-404.2(d)(vi) requires rejection of a bid which attempts to limit Government rights.

That DAR section is not applicable here. As indicated in our prior decision, the failure to comply with an option provision is not a material deviation requiring bid rejection where the IFB states that the option will not be part of the evaluation and the IFB establishes no ceiling on option prices. In these circumstances, we have held that the Government is not deprived of a valuable contract right because bidders may offer unreasonably high option prices and there is no substantial difference between unreasonably high option prices and no option prices. Since an otherwise proper bid could not be rejected because of unreasonably high option prices, the absence of prices likewise should not result in bid rejection. The Government's position is basically the same. 51 Comp. Gen. 528 (1972).

AMS also argues that under paragraph M.7 of the solicitation, the Solar Flame and H/R Products bids should have been rejected as nonresponsive. This paragraph provides as follows:

"The evaluation of offers will be on the basis of the quantity to

be awarded, exclusive of the option quantity. Offers deleting the Option for Increased Quantity Clause in Section H [paragraph H.4] will not be considered non-responsive."

Paragraph H.4, "Option for Increased Quantity," is a separate option provision. AMS contends that, since paragraph M.7 only excuses the deletion of the paragraph H.4 option and not the Surge Option, any bid which fails to offer the Surge Option provision is nonresponsive. AMS maintains that, in previously rejecting this argument, we misinterpreted the paragraph. According to AMS, if the Army intended to permit bidders to delete the Surge Option provision, it would have included a specific authorization as it did for the paragraph H.4 option. In support of this argument, AMS refers to a recent Army solicitation which warned bidders that failure to comply with the Surge Option provision would result in bid rejection.

In our prior decision, we recognized that paragraph M.7 was unclear. However, we concluded there and affirm that the solicitation did not require that the Surge Option be evaluated. We stated that the general regulatory policy is that solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded, exclusive of the option quantity. DAR § 1-1504(a). If the Government is to evaluate an option for award purposes, the solicitation must specifically provide for such evaluation by inclusion of a required clause. DAR §§ 1-1504(b), (c) and (d). The required clause for option evaluation was not included. In any event, even if the IFB had warned that the failure to include option prices would require bid rejection, the lack of an option ceiling requirement and the nonuse of options in evaluation excuse the failure to quote option prices. See 51 Comp. Gen., supra; B-166138, April 11, 1969.

AMS believes that the recent inclusion in an Army solicitation of a warning that failure to comply with the Surge Option provision will result in bid rejection indicates the Army's actual intentions.

The protester contends that the Army did not make this clear to us in its protest report to take advantage of the lower prices offered by the non-responsive bidders. Whether the failure to comply with the solicitation's Surge Option provision was a material defect requiring bid rejection must be decided under the provisions of the specific solicitation. Our consideration of this matter would have been the same, even if the Army had argued that the Solar Flame and H/R Products bids were nonresponsive because of the subsequent solicitation. The Army's alleged failure to reject the Solar Flame and H/R Products bids to obtain lower prices is of no consequence since rejection of those bids would have been improper.

Therefore, since we have found that AMS has not shown that our decision of September 2, 1981, contained any error of fact or law, the decision is affirmed.

*for Milton J. Fowler*  
Comptroller General  
of the United States

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

B-203589.2

November 2, 1981

The Honorable Lawton Chiles  
United States Senator  
Federal Building  
Lakeland, Florida 33801

Dear Senator Chiles:

We refer to your letter dated September 22, 1981, concerning the protest of Mr. Arthur Ford of AMS Manufacturing, Inc., under solicitation No. DAAA09-81-B-0049 issued by the United States Army Armament Materiel Readiness Command, Rock Island, Illinois.

By decision of today, we have affirmed our prior decision denying the protest. As requested, we enclose two copies of the decision and the enclosure to your letter. In addition, a copy of the prior decision is enclosed.

Sincerely yours,

*Milton J. Forster*  
for Comptroller General  
of the United States

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