September 2, 1994

P.S. Protest No. 94-31

H. J. CORBIN

Solicitation Nos. 608-6019-94 and 608-6039-94

DIGEST

Request for reconsideration of protest is denied when it restates contentions raised in the course of the protest and addresses matters not raised before. New contention that bidder's misdating of bid requires its rejection is incorrect; the error was a clerical mistake apparent on the face of the bid.

ON RECONSIDERATION

Mr. H. J. Corbin requests reconsideration of portions of this office's decision dismissing in part and denying in part his protest against the award of two mail transportation contracts to Mr. Louis E. Shorter. *H. J. Corbin*, P.S. Protest No. 94-31, August 4, 1994.

Mr. Shorter submitted four bids under two names under solicitations 608-6019-94 (solicitation -19) and 608-6039-94 (solicitation -39). One of the bids, intended for solicitation -19, was misidentified on the envelope as being for solicitation -39. When that bid was opened, the contracting officer determined that the misidentification of the solicitation number was a minor informality, and considered that bid in connection with and entered it on the abstract of bids for solicitation -19.

The decision concluded that Mr. Corbin lacked standing to protest the award to Mr. Shorter under solicitation -19 because his objections to the award, if sustained, would not entitle him to the award. With respect to solicitation -39, the decision concluded that Mr. Shorter's submission of multiple bids was not improper; that the exclusion of the bid intended for solicitation -19 from the competition under solicitation -39 was proper; and that the contracting officer properly could accept the lower of Mr. Shorter's two bid bids on that solicitation, although he had excluded the lower of Mr. Shorter's two bids on solicitation -19 because award on the basis of that bid would have been unfair to the bidder. Mr. Shorter's lower bid on solicitation -39, unlike his lower bid on solicitation -19, was not out of line with the other bids received.

The request for reconsideration was received by this office on August 19. A "supplement" to that request dated August 18, but postmarked and accompanied by a letter dated April 23, was received August 25.

The initial request for reconsideration makes several points, which we summarize as follows:

> -- Mr. Shorter's bids were nonresponsive because they included different taxpayer identification numbers for the same entity. It was inappropriate for the contracting officer to consider all of Mr. Shorter's bids as referring to the same contractor, to the detriment of the other bidders.
>
> -- Citing Comptroller General decisions for the proposition that a bidder may not take advantage of a situation in which it may decide whether to withdraw a bid after bid prices have been exposed, the protester contends that the contracting officer similarly may not correct the bid (that is, for example, by correcting the taxpayer identification number).
>
> -- The error in the taxpayer identification number is not a clerical error which may be corrected, citing a Comptroller General decision.[1]
>
> -- The fact that Mr. Shorter's accepted bid on solicitation -39 was dated April 4, a date prior to the April 20 date that the solicitation was issued, raises further questions about the reasonableness of that bid.

The protester's supplemental submission makes the following further points:

> -- Mr. Shorter's bids with respect to solicitation -39 should have been considered with respect to the dates of their receipt; that is, the bid in the amount of $41,604, which was received on May 16, should have been considered as replacing the $38,344 bid which was received on May 12.
>
> -- Citing various decisions of the Comptroller General having to do with the correction of mistakes and situations in which a bidder has the opportunity to "second-guess" his competitors, the protester challenges the contracting officer's use of the regulations applicable to the correction of mistakes, stating that it was detrimental to the competitive process.

DISCUSSION

Our review of requests for reconsideration is limited.

[1] The cited decision, *Russell Drilling Co.*, Comp. Gen. Dec. B-218577, 85-2 CPD 87, July 25, 1985, deals with the strict requirement that when a bidder seeks to correct an error in its bid and the bid, as corrected, would displace another bid, both the error and the intended bid price must be evident from the face of the bid. Procurement Manual (PM) 12.7.6. b.3.(a)(3) is to the same effect. However, neither the decision nor the regulation has application to the situation at issue here, in which there was no claim of a mistake in a bid price which would have displaced a lower bid.

The standard for our review of reconsideration requests is very narrow. PM 4.5.7 n. states that a "request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered." Further, the controlling decision on this standard of review states:

> Information not previously considered refers to that which a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest. Reconsideration is not appropriate where the protester simply wishes us to draw from the arguments and facts considered in the original protest conclusions different from those we reached in that decision. Reassertion of arguments previously considered and rejected by this office does not constitute a ground for reconsideration. Similarly, where information and arguments were known or available to the protester during the development of its protest but were not presented in the original proceeding, such information and arguments may not be considered in a request for reconsideration.

Federal Properties of R.I., Inc., *On Reconsideration*, P.S. Protest No. 93-02, July 9, 1993, quoting *Fort Lincoln New Town Corporation*, *On Reconsideration*, P.S. Protest No. 83-53, November 21, 1983 (citations omitted).

To the extent that the protester contends that Mr. Shorter's bids contained an erroneous taxpayer identification number, that the submission of multiple bids made the bids nonresponsive, or that it was improper for the contracting officer to consider both bids because the later bid should have replaced the former one, he is repeating contentions previously made in the course of the protest.[2] To the extent that he is contending that the contracting officer misapplied the regulations applicable to the correction of mistakes, he is raising a new matter which cannot now be considered.[3]

The remaining issue, the misdating of Mr. Shorter's bid on solicitation -39, may have been based on information not available to the protester until he received the protest decision. The protester is correct that Mr. Shorter could not have submitted a bid on April 4 for a

[2] We note, however, contrary to the protester's contention, that the completion of a taxpayer identification clause is a matter pertaining to a bidder's responsibility, and not to the responsiveness of the bid. Accordingly, "the failure of a bidder to properly complete such items may be corrected after bid opening." *Nomura Enterprise Inc.--Reconsideration*, Comp. Gen. Dec. B-244993.2, 91-2 CPD 322, October 9, 1991.

[3] It is difficult to understand the protester's contention in this respect. The contracting officer took no action under the mistake regulations with respect to Mr. Shorter's bids on solicitation -39, instead accepting the lower of the two bids which Mr. Shorter submitted.

solicitation which was not issued until April 20. We conclude, however, that the April 4 date (it was actually expressed as "4/4/94") was a correctable "clerical mistake apparent on the face of the bid" since the page on which the date appeared also included, in the bidder's hand, the correct solicitation number and the April 20 solicitation date, providing clear evidence that the bid followed the solicitation.

The request for reconsideration is denied.

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