

Essenstedt

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DECISION



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

FILE: B-218304.2; B-218305.2 **DATE:** June 24, 1985

MATTER OF: PolyCon Corporation--Request for Reconsideration

DIGEST:

Request for reconsideration of a protest which was dismissed on the grounds that the protester, as a potential subcontractor or supplier, was not an "interested party" is denied, where protester failed to state its status in its original protest, and where evidence indicates that protester has always been a subcontractor/supplier.

PolyCon Corporation (PolyCon) requests reconsideration of our decision in PolyCon Corp. B-218304; B-218305, May 17, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ _____, in which we dismissed PolyCon's protest of the specifications included in invitation for bids (IFB) DAKF11-85-B-0035 and DAKF11-85-B-0040 issued by the Department of the Army at Fort McPherson, Georgia. The protest was dismissed on the basis that as a potential subcontractor on a direct federal procurement, PolyCon could not be considered an actual or prospective bidder or offeror as defined by § 2714(a) of the Competition in Contracting Act of 1984, Pub. L. No. 98-369, (31 U.S.C.A. § 3554(a)(1)).

PolyCon's request for reconsideration reads in its entirety as follows:

"We request that you reconsider your DECISION dated May 17, 1985 on the basis that we are a prospective prime bidder whose direct economic interest would be affected by the award of a contract."

For the reasons discussed below, this request is denied.

Our Bid Protest Procedures in effect prior to CICA allowed a potential subcontractor, in limited circumstances, to meet the interested party requirement. See Radix II, Inc., B-208557, Nov. 29, 1982, 82-2 C.P.D. ¶ 484. However, in our decision of May 17, 1985, we stated

that pursuant to the new, more restrictive statutory definition of an "interested party" our Office will no longer consider subcontractor protests except where the subcontract is by or for the government. 4 C.F.R. § 21.3(f)(10) (1985). Thus, now the issue of whether a protester is a potential subcontractor or potential prime contractor is of greater significance than formerly.

In its original bid protest, PolyCon did not expressly state whether it was a potential prime or subcontractor. We therefore proceeded on the assumption that it was a subcontractor in light of our extensive prior experience with the protester.

PolyCon has filed 23 bid protests with our Office since August 1983. Virtually all have concerned the variance of solicitation specifications from those approved by the Underground Heat Distribution (UHD) Systems Committee under the Federal Agency Prequalification Procedure for UHD Systems and included in the suppliers' approved brochures. In PolyCon's prior protests it has either characterized itself as a subcontractor/systems supplier ^{1/} or such can be discerned from the record. In none of the prior cases does it appear that PolyCon bid as a prime construction contractor upon a contract (such as those at issue) for the installation of a UHD system.

In view of this evidence which indicates that PolyCon is solely a subcontractor/supplier rather than a prime contractor for the installation of UHD systems, we are not prepared to reopen the file and examine the merits solely on the basis of the protester's brief assertion in its request for reconsideration that it is a prospective prime contractor.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel

^{1/} The single exception concerned an IFB to supply a UHD system for installation by government in-house personnel. PolyCon Corp., B-218206.1, Apr. 11, 1985, 85-1 C.P.D.
¶ 414.