



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Westinghouse Electric Corp.
File: B-225694.2
Date: April 22, 1987

DIGEST

1. The General Accounting Office will not consider a protest against a provision in a solicitation, even though filed prior to bid opening, where that provision is based on information contained in an agency report on an earlier protest that was dismissed because the protester failed to respond by comments on the report or requesting that the protest be considered on the existing record.
2. The purpose of the General Accounting Office bid protest regulations is to assure a just and speedy resolution of bid protests without undue disruption to the federal procurement process, and that purpose is not well served by considering a protest that raises the same issues addressed in an agency report to a protest that has been dismissed because of the protester's own inaction.

DECISION

Westinghouse Electric Corporation, Westinghouse Furniture System Division protests any award under invitation for bids (IFB) No. AB-754931, issued by the Tennessee Valley Authority (TVA). The IFB is a reissued solicitation for an indefinite quantity term contract to supply panel-to-panel partition systems for TVA facilities. The solicitation was reissued in response to an earlier protest filed by Westinghouse.

We dismiss the protest.

Westinghouse originally protested the procurement on February 4, 1987 contending, in essence, that the specifications were restrictive in that they favored the product of one manufacturer by requiring compatibility with the product of the firm whose systems were already in use and in inventory at TVA.

On March 12, 1987, TVA filed its agency report in which, among other things, it agreed that it would be feasible to consider noncompatible systems provided bids offering noncompatible systems were evaluated to reflect the

038680

increased costs to TVA for maintaining a noncompatible inventory. These costs were said to include additional inventory and warehousing space not otherwise required, additional inventory tracking efforts, personnel and training. These increased costs were said to be \$742,261.1/ That sum was included as an evaluation factor in the solicitation that was issued on March 3. Westinghouse never responded to the agency report although it had an ample opportunity to do so. On March 30, 1987, we dismissed the protest without consideration of the merits because of Westinghouse's failure to file comments on the agency report or to file a statement requesting that the case be decided on the existing record. 4 C.F.R. § 21.3(e) (1986).

This protest, filed on April 6, 1987, while filed before the extended bid opening date of the resolicitation that includes the evaluation factor, nonetheless is based totally on information contained in the agency report to which Westinghouse chose not to respond. We view this protest as nothing more than an attempt to avoid the consequences of the protester's failure to respond to the agency report. In other words, it is, in effect, a request -- for reconsideration of our dismissal of the original protest that relies on the fact that the bid opening date for the resolicitation had not yet passed when it was filed. This is analogous to the situation in a prior case where a protest against the specifications was filed with the agency before proposals were due and denied by the agency more than 10 days before the closing date. Although the subsequent protest to our Office was filed before the closing date, we interpreted our Bid Protest Procedures then in effect, 4 C.F.R. § 20.2(a), to require filing with our Office within 10 days of the agency's denial.2/ Informatix, Inc., 58 Comp. Gen. 750 (1979), 79-2 CPD ¶ 159.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3151 et seq. (Supp. III 1985), the bid protest process may not be delayed by the failure of a party to make a filing within the time periods established by our

1/Approximately 10 percent of the value of the supplies to be purchased. The value of the contract is estimated to be approximately \$7 million. The total value of the systems already in TVA's inventory is \$27 million.

2/The applicable provision of our current Bid Protest Regulations is 4 C.F.R. § 21.2(a)(2) (1986).

Regulations. Commanche Natural Gas Co., Inc.--
Reconsideration, B-224314.2, Nov. 25, 1986, 86-2 ¶ 610.
The purpose of the time limits prescribed in our Bid
Protest Regulations is to assure a speedy and just
resolution of protests without undue disruption of the
federal procurement process. Sound Partnership--Request
for Reconsideration, B-220915.2, Jan. 13, 1986, 86-1 CPD
¶ 31. That purpose is not well served by permitting a
protester to circumvent the time limitations of our
Regulations by our consideration of a protest that raises
the same issues addressed in an agency report to a protest
that has been dismissed because of the protester's own
inaction. We would not consider the protest if it were
styled as a request for reconsideration, id., and we see no
reason to consider it in the form of a new protest.

The protest is dismissed.

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