



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mnemonics, Inc.
File: B-226309.2
Date: May 1, 1987

DIGEST

1. Protester whose initial protest that agency improperly determined its proposal to be technically unacceptable was dismissed as untimely may not obtain General Accounting Office's consideration of same issue in a subsequent protest of the agency's resolicitation for the same requirement.
2. Cancellation of request for proposals set aside for small business and resolicitation on unrestricted basis is proper where all small business proposals are found technically unacceptable.

DECISION

Mnemonics, Inc. requests reconsideration of our February 18, 1987 dismissal as untimely of its protest concerning the Department of the Air Force's cancellation of request for proposals (RFP) No. F08606-86-R-0027, a total small business set-aside, for a station clock. Mnemonics also protests the Air Force's resolicitation of the requirement, RFP No. F08606-87-R-0009, which requests offers on an unrestricted basis.

We affirm our prior dismissal and deny the new protest ground.

RFP-0027 was canceled on October 29, 1986, following a determination by the Air Force that all small business proposals received were technically unacceptable. Mnemonics did not timely protest within 10 working days either the cancellation or the determination by the Air Force that Mnemonics' proposal was technically unacceptable. We therefore dismissed its protest as untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986). In its request for reconsideration,

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Mnemonics does not dispute that it did not timely raise these protest grounds, but argues that its protest is essentially directed to the resolicitation, RFP-0009, which is allegedly improperly not restricted to small business.

According to Mnemonics, resolicitation by the Air Force on an unrestricted basis deprives the firm of the opportunity to compete in a small business environment. In support of its position that small business can compete for this requirement, Mnemonics advances several arguments, technical and other, as to why its proposal was in fact technically acceptable under the original solicitation. In further support of its contention that its proposal was technically acceptable, Mnemonics also argues that some technical approaches in its proposal were subsequently incorporated by the Air Force into the new solicitation.

We will not consider these arguments. The determinations by the Air Force to reject Mnemonics' proposal as technically unacceptable and to cancel the solicitation were not timely protested and we will not permit a protester whose initial protest is dismissed as untimely to circumvent our timeliness rules by obtaining our consideration of the same matter in a subsequent protest. See generally Central Texas College, B-208528.3, Dec. 22, 1982, 82-2 CPD ¶ 565. Further, the Federal Acquisition Regulation, 48 C.F.R. § 19-502.2 (1986), directs the setting aside of procurements if the contracting officer determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns. Here, the contracting officer determined that there was no such reasonable expectation because no other acceptable small business proposals were received under the original solicitation.^{1/} Therefore, even if we assume that the Mnemonics proposal was technically acceptable, that would not establish that at least two responsible small business firms were available that could meet the agency's needs. Consequently, we find nothing improper in the resolicitation on an unrestricted basis. See Electronic Warfare Associates, B-224504, B-223938, Nov. 3, 1986, 86-2 CPD ¶ 514; Science and Management Resources, Inc., et al., B-212628 et al., Jan 20, 1984, 84-1 CPD ¶ 88.

^{1/}Mnemonics also suggests that the reissued solicitation contains specification changes that could be more easily met by small business than the specifications of the original solicitation. The record shows, however, that while there were some specification changes, they did not essentially alter the scope or nature of the competition.

Our prior dismissal is affirmed and the new protest ground is denied.

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