



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Michael Petrone  
File: B-230816  
Date: July 22, 1988

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### DIGEST

1. Protest that agency improperly changed terms of solicitation without first issuing an amendment defining the change, and then only advised awardee of this change, is untimely and will not be considered on the merits when not filed within 10 days of date protester should have known basis of protest.
2. Post-award decision to extend date for closing of sale of real property is a matter of contract administration, which is the function and responsibility of contracting agency, and will not be reviewed by General Accounting Office where record does not establish that contract was awarded with the intention that its terms would be modified to the prejudice of unsuccessful bidders, or that the changed contract is materially different from the contract on which the competition was based.

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### DECISION

Michael Petrone protests the General Services Administration's (GSA's) sale, by public auction, of 8.8 acres of realty known as the former Nike Missile Facility, Bristol Township, Pennsylvania, to De Sai, Robinson, Rahm Associates (De Sai), under invitation for bids (IFB) No. 4-GR-PA-580-A. Petrone principally contends that GSA improperly changed the terms of the solicitation by deciding to clear the property of debris prior to conveyance without first issuing an amendment to this effect, as required by regulation, and then advised only the awardee of this change giving the awardee an improper competitive advantage. Petrone claims that, had it been advised of GSA's intentions, it would have bid a substantially higher amount at the auction.

We dismiss the protest.

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## BACKGROUND/FACT-FINDING CONFERENCE

The solicitation provided that the property was to be auctioned "as is," and that transfer of title of the property would take place within 60 days after award, unless otherwise agreed upon by the parties. Prospective bidders were urged to inspect the site prior to the sale. The auction was held on February 18, 1987, and award was made to De Sai, the highest bidder, at a price of \$217,000. Conveyance of the property has not occurred, having been delayed initially pending GSA's completion of a general site cleanup, and recently having been postponed pending GSA's certification that the site is clear of all contaminants (discovered during the general cleanup).

On June 3, 1988, a fact-finding conference was convened, see Bid Protest Regulations, 4 C.F.R. § 21.5 (1988), to determine whether the protester was informed, prior to the auction, that the government would be responsible for a general site cleanup, such that Mr. Petrone was in fact competing on an equal footing with the awardee. GSA's report had suggested that the awardee and all other offerors had received this information at the auction, but Mr. Petrone denied having received it. Based on the testimony given, we find that the record establishes the pertinent facts below.

On January 14, approximately 1 month prior to the auction date, GSA, in preparation of a scheduled open-house at the property, decided to conduct a general site cleanup of the facility. Conference Transcript (CT) at 21. Sometime between that date and the date of the auction, Mr. Petrone visited the site, at which time he had a conversation with a GSA representative concerning responsibility for clearing the property of any hazardous materials discovered after conveyance. CT at 5, 22. Mr. Petrone was not advised that GSA intended to conduct a general site cleanup. CT at 5, 12, 22. A business associate of Mr. Petrone also visited the site prior to the auction to discuss the removal of any hazardous waste from the facility. CT at 9-10, 12, 14-17. A representative of the awardee had a conversation (contents unknown) with the GSA representative concerning the property sometime before January 14. CT at 22, 28.

## ANALYSIS

Our Bid Protest Regulations require that protests, other than those based upon alleged improprieties in a solicitation, be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Although Mr. Petrone asserts that his bases of protest only arose when the

considerable delay in transfer of title of the property became apparent, the record shows otherwise. The record contains a February 25 letter to Mr. Petrone in which GSA indicates that it had advised the bidders "that the [refuse and debris] cleanup would be completed prior to closing." In view of this information, Mr. Petrone was on notice of any protest grounds based on pre-auction notice to bidders of a site cleanup upon receipt of GSA's letter. Mr. Petrone's March 24 protest was not filed within 10 working days of the presumed date of receipt of this letter, March 3. See Carr-Gottstein Properties, B-227750, Aug. 5, 1987, 87-2 CPD ¶ 131 (where it is not clear when a letter is received, we assume receipt within one calendar week from the date it was sent). Accordingly, Mr. Petrone's arguments concerning notice of the site cleanup are untimely.

In any event, the record does not support Petrone's belief that the awardee, alone among the bidders, was given advance notice of GSA's intention to conduct a general site cleanup. While the record nowhere establishes that Mr. Petrone was notified prior to the auction of GSA's plan to conduct a general cleanup of the property, CT at 5, 12, 22 (the record does suggest that Mr. Petrone's business associate may have been notified, CT at 14, 17), there also is no clear evidence that the awardee was ever informed of this decision. GSA's statement in its report that all bidders were advised of the site cleanup plan at the auction is not supported by the record; GSA testified that the report was based on the belief that the auction official had made a general announcement to all bidders, but the official himself could not recall making the announcement. CT at 22-23. Thus, we find that all bidders, including the awardee, had the same knowledge of the terms and conditions of sale of the property at the time of the auction, and that the record does not support the protester's speculation that the awardee had a competitive advantage based on advance knowledge of the cleanup plan.

Petrone also protests the extension of the date for conveyance of the property, and GSA's decision, following the general debris cleanup, to conduct an extensive environmental survey of the property and to remove all hazardous material, including contaminated fuel tanks, from the site. Again, Mr. Petrone asserts that each of these changes to the terms of the contract greatly enhanced the value of the property, and that he would have bid differently had he had this information.

Any modification of the terms of the sale agreement is a matter of contract administration which is primarily within the ambit of the contracting agency. Frankford Management Group, B-212285.2, Nov. 4, 1983, 83-2 CPD ¶ 527. We will

not review a complaint about such modifications unless it appears that the procuring activity awarded the contract with the intention of altering its terms after award to the prejudice of the prospective awardee's competitors, see Tricentennial Energy Corp., B-197829, Oct. 21, 1980, 80-2 CPD ¶ 303, or it appears that the contract as changed is materially different from the contract on which the competition was based. American Air Filter Co., Inc., 59 Comp. Gen. 285 (1978), 78-1 CPD ¶ 136.

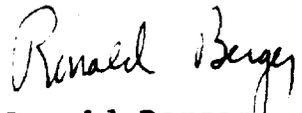
Here, the protester has not shown that either exception is applicable. First, there is no evidence that GSA awarded the contract intending to delay conveyance beyond the 60 days specified in the solicitation; GSA apparently expected that the relatively simple site cleanup could be completed within the 60-day closing period. At the time of award, GSA had no apparent reason to believe that other problems would arise, including the discovery of contaminants at the site, and that resulting delays would be necessary to allow time to remove them.

Moreover, we do not consider the unforeseen delay as materially altering the nature of the contract. Under applicable regulations, 41 C.F.R. § 101-47.401-4 (1987), an agency is required to delay conveyance of real property until the government completes a cleanup of hazardous materials; we thus view any sale of realty as being subject to these regulations. In addition, Mr. Petrone was fully aware of the government's obligation in this regard, based on his conversations with GSA officials at the site. CT at 5, 22. Accordingly, we will not consider these matters of contract administration.

Finally, during the fact-finding conference, the protester refocused its protest, arguing that had the solicitation adequately defined the responsibilities of both the successful bidder and the government with respect to the removal of all contaminants, and advised bidders that conveyance would be postponed pending the removal of these materials, the risk inherent in purchasing this property would have been greatly diminished and Mr. Petrone would have bid differently. CT at 33-35. As indicated above, however, applicable regulations do define the government's responsibility

in this area, and Mr. Petrone was made aware of such prior to the auction. We are not persuaded that a more detailed explanation of the matter in the solicitation would have significantly altered Mr. Petrone's bidding strategy.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger  
Deputy Associate  
General Counsel