



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gel Systems, Inc.--Request for Reconsideration

File: B-233286.2

Date: March 8, 1989

DIGEST

Decision dismissing protest on ground that protester is not an interested party is affirmed where protester has presented no evidence that prior decision was based on factual or legal errors.

DECISION

Gel Systems, Inc., requests reconsideration of our decision, Gel Systems, Inc., B-233286, Jan. 10, 1989, 89-1 CPD ¶ _____, in which we dismissed the firm's protest of the award of a contract to Educational Media, Inc. (EMI), under invitation for bids (IFB) No. CO-46-88, issued by the Immigration and Naturalization Service (INS) for 6 language laboratory systems and 90 student booths. We dismissed the protest because Gel is not an interested party to challenge the award to EMI.

We affirm the dismissal.

Gel was the highest among four bidders responding to the IFB. Stevens Learning Systems, Inc., the low bidder, was rejected as nonresponsive, and EMI, the second low bidder, was awarded the contract. The third low bidder, Crumley and Associates, remained lower than Gel even after a 12 percent cost differential was applied.^{1/} In its protest, Gel contended that the two lowest bidders, Stevens and EMI, were nonresponsive because they listed alternatives in their bids. Additionally, Gel contended that if Stevens' bid was rejected for offering a 58-inch console, EMI's bid should

^{1/} Crumley certified in its bid that its offered product was foreign made. Under Federal Acquisition Regulation § 25.105(a), a 12 percent cost differential is applied to bids from domestic small business concerns offering a foreign product in order to determine the reasonableness of the firm's price.

have been rejected as well for offering a 60-inch console rather than the required 96-inch console. While Gel, in its comments on the agency report on the protest, generally asserted that Crumley, the third low bidder, was also nonresponsive, it specifically declined to explain its contention and requested that the protest be sustained based solely on a finding that the bids of Stevens and EMI were nonresponsive.

In our decision, we noted that for the purpose of filing a protest, a protester must be an "interested party" whose direct economic interest would be affected by the award of the contract or by the failure to award a contract. See Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551(2), 3552 (Supp. IV 1986); 4 C.F.R. § 21.0(a) (1988). Additionally, we stated that a party would not be deemed interested where it would not be in line for award even if its protest were sustained. Brunswick Corp. and Brownell & Co., Inc., B-225784.2, B-225784.3, July 22, 1987, 87-2 CPD ¶ 74.

We found that Gel was not an interested party with standing to protest the contract award to EMI since even if its protest had been sustained, Crumley, rather than Gel, would have been in line for award. Although Gel asserted generally that Crumley's bid was also nonresponsive, as noted above, it provided no evidence in support of its contention and the record indicated that the INS had found Crumley's bid to be responsive.

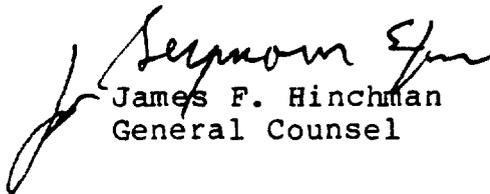
Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a), a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of our prior decision is deemed warranted and must specify any errors of fact or law made or information not previously considered. Information not previously considered refers to information which was overlooked by our Office or information to which the protester did not have access when the initial protest was pending. O'Gara-Hess & Eisenhardt Armoring Co.--Reconsideration, B-232508.2, Sept. 29, 1988, 88-2 CPD ¶ 302.

In its request for reconsideration, Gel states that it did not earlier furnish evidence on the alleged nonresponsiveness of Crumley's bid because Gel's initial protest did not concern Crumley, only Stevens and EMI, and it was uncertain as to whether our Office would consider the firm's comments

on Crumley's nonresponsiveness. Gel now attempts to show that its firm would have been next in line for contract award because Crumley's bid should have been rejected as nonresponsive and the firm found nonresponsible by INS.

Under our regulations, 4 C.F.R. § 21.1(c)(4), information relevant to the question whether Crumley's bid was responsive was required to be submitted when Gel's original protest was under consideration. Gel admits that the information on which it now relies was available to it while the protest was pending. Moreover, despite the fact that the agency report on the protest challenged Gel's status as an interested party, Gel, in its comments on the report, specifically declined to elaborate on its unsupported assertion that Crumley's bid was nonresponsive. Gel's attempt to raise the issue now is clearly untimely. O'Gara-Hess & Eisenhardt Armoring Co.--Reconsideration, B-232508.2, supra.

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel