

Rickerman



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Midwest CATV
File: B-233105.3
Date: April 4, 1989

DIGEST

1. Request for reconsideration filed more than 10 days after basis for request was known is untimely and not for consideration on the merits.
2. Protester's speculation regarding agency's possible determination of technical acceptability does not provide a basis for protest.

DECISION

Midwest CATV protests any award under request for proposals (RFP) No. 101-29-88, issued by the Veterans Administration (VA), for approximately 200 TV Receive Only Satellite Reception Systems. Midwest CATV contends that it should have received the award on the basis of a previous round of best and final offers (BAFOs), under which VA had made an award to Midwest Communications, but subsequently suspended the award after a protest was filed in our Office by United Satellite Systems and VA determined that the award process was defective.

We dismiss the protest.

The RFP was initially issued on August 29, 1988, and by the September 19 deadline for submission of initial proposals, the VA received nine proposals, four of which were determined to be within the competitive range. BAFOs were submitted by September 26 and award was made to Midwest Communications on September 29 on the basis that it had received the highest combined score for cost and technical factors. United protested the award to our Office on the basis that the VA had miscalculated its price, and that United had actually submitted a lower priced proposal than Midwest Communications, but had been evaluated as if it had submitted a higher priced proposal.

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In reviewing United's protest, VA determined that it had not conducted meaningful discussions because it had failed to bring to United's attention certain deficiencies in its proposal. Accordingly, VA decided to suspend performance, hold discussions, request another round of BAFOs and correct the selection decision if warranted. When VA communicated this determination to our Office, we closed our file in the matter by notice dated November 16 on the basis that the protest was academic because relief had been granted. We sent copies of this notice to the interested parties, including Midwest CATV.

Midwest CATV did not request reconsideration in response to this notice. Midwest CATV had submitted a letter to our Office in response to a VA letter notifying it of the proposed corrective action, in which Midwest CATV indicated its general accord with the VA's action, but requested documents in order to be able to file a protest. Since the requested documents consisted of material from the proposals, which it was within VA's discretion to determine whether or not to release, our Office did not take any action with respect to Midwest CATV's request.

On January 12, 1989, VA reopened discussions with the interested parties in the competitive range, whereupon Midwest CATV protested to our Office by letter dated January 17. In essence, the protester is alleging that it should have been awarded the contract on the basis of the previous round of BAFOs because it allegedly submitted the low priced, technically compliant proposal thereunder.

Midwest CATV is actually requesting reconsideration of our dismissal of United's protest as academic because of the relief granted by VA. Under our Bid Protest Regulations, 4 C.F.R. § 21.12(b) (1988), a request for reconsideration must be filed within 10 days of the date on which the basis for the reconsideration request was or should have been known. We advised Midwest CATV on November 16, 1988, that we were closing our file in the matter because, in our view, VA's decision to reopen discussions granted the relief requested by the protester and rendered the protest academic. If Midwest CATV believed that the relief granted was inappropriate, it was required to request reconsideration by our Office within 10 days of receipt of this notice, which it did not do. See Riffe-Cobb Reporting--Request for Reconsideration, B-223194.3 et al., Jan. 8, 1987, 87-1 CPD ¶ 31. Accordingly, the request for reconsideration is untimely and is not for consideration.

Alternatively, to the extent that Midwest CATV's most recent submission may be considered an initial protest, it is also untimely since it was filed more than 10 days after the date on which Midwest CATV learned of VA's decision to reopen discussions, which constitutes the basis for the protest that Midwest CATV should have been awarded the contract. See 4 C.F.R. § 21.2(a)(2).

To the extent that Midwest CATV is protesting that under the present negotiations VA has accepted proposals from offerors who are offering technically noncompliant systems, the protest is premature and without any basis. VA has not as yet made an award, or even a determination regarding the technical acceptability of the offers under the current solicitation, therefore, this basis of protest constitutes mere speculation on Midwest CATV's part. If Midwest CATV is protesting the VA's initial determination of technical acceptability under the previous round of BAFOs, then the protest is both untimely and academic.

The protest is dismissed.

for 
Robert M. Strong
Associate General Counsel