



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CAT Contracting, Inc./Michigan Sewer
Construction Company--Reconsideration

File: B-234927.2

Date: July 28, 1989

DIGEST

A contractor adversely affected by a prior General Accounting Office decision is not eligible to request reconsideration of that decision where the firm was notified of the original protest but did not participate in the protest.

DECISION

CAT Contracting, Inc./Michigan Sewer Construction Company requests reconsideration of our decision in F&E Erection Co., B-234927, June 19, 1989, 89-1 CPD ¶ _____. In that decision, we sustained the protest by F&E against the award of a contract to CAT under invitation for bids (IFB) No. DACW64-89-B-0027, issued by the Army Corps of Engineers for construction of the Suntide Effluent Ditch Project at Corpus Christi Ship Channel, Texas. Specifically, we found that because CAT submitted inflated prices for two line items for which it would receive payment early in contract performance, tantamount to an advance payment, its bid should have been rejected as materially unbalanced. We recommended that the Corps reject CAT's bid and award the contract to the next low, responsive, responsible bidder. In its request for reconsideration CAT asserts that it intended to perform the contract in a sequence that would not result in receiving payment in excess of the value of any work completed. CAT therefore argues that its bid should be accepted.

We dismiss the request for reconsideration because CAT is not eligible to seek reconsideration.

Our Bid Protest Regulations, 4 C.F.R. § 21.12 (1988), permit the protester and "any interested party who participated in the protest" to request reconsideration. In promulgating section 21.12 of our Regulations, we intended to limit those who could request reconsideration of a protest decision to parties who had a sufficient interest in the matter, and who

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had engaged in the effort necessary to reasonably participate in the protest process before a decision was reached, thus minimizing the possible disruption to the procurement process that could arise from a decision on reconsideration. The rationale behind this provision is also consistent with our belief that to the maximum extent possible our decisions should be final, thereby insuring the prompt and meaningful resolution of bid protests. Sippial Electric & Construction Co., Inc.--Reconsideration, B-229839.2, Apr. 26, 1988, 88-1 CPD ¶ 406.

Accordingly, we have held that where a party is on notice of a protest, that party's failure to participate in the original proceedings precludes it from requesting reconsideration. J.W. Cook, Inc.--Request for Reconsideration, 67 Comp. Gen. 366 (1988), 88-1 CPD ¶ 319. Here CAT was provided notice that the protest was filed. In addition, CAT was sent a copy of the agency's report responding to the protest which thoroughly discussed the facts and issues involved. CAT, however, chose not to exercise its right to address the issues raised in F&E's protest. We do not believe that CAT should now be afforded an opportunity to raise issues which it could have raised during the pendency of the original protest, since our decisions clearly preclude a piecemeal presentation of evidence, information or analyses. Id. Consequently, CAT's request for reconsideration is dismissed.


Ronald Berger
Associate General Counsel