

E. Melody



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Woodington Corporation--Reconsideration
File: B-235957.2
Date: November 15, 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 proceedings.

DECISION

T.A. Loving Company requests reconsideration of our decision Woodington Corp., B-235957, Oct. 11, 1989, 89-2 CPD ¶ ____, sustaining a protest challenging the responsiveness of Loving's bid under invitation for bids (IFB) No. DTCGB3-89-B-62046, issued by the Coast Guard for installation of a waste water treatment plant. We found that Loving's bid was nonresponsive because of the firm's failure to acknowledge a material amendment to the IFB.

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

Prior to bid opening, the Coast Guard issued three amendments to the IFB. In relevant part, amendment No. 3 incorporated a new standard Federal Acquisition Regulation provision, § 52.203-10, entitled "Remedies for Illegal or Improper Activity," which implements the Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. 100-679, § 27(f), 101 Stat. 4055, 4065 (1988). Loving, the low bidder, failed to acknowledge the amendments before bid opening, maintaining that they were never received. The contracting officer nevertheless found Loving's bid responsive, concluding that the firm's failure to acknowledge the amendments was a minor informality.

Woodington Corporation, the second low bidder, then filed a protest in our Office challenging any award to Loving. We sustained the protest, finding that amendment No. 3 was

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material and thus that Loving's failure to acknowledge it before bid opening rendered its bid nonresponsive. In its request for reconsideration, Loving argues that our decision was erroneous.

Our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1989), permit the protester and "any interested party who participated in the protest" to request reconsideration. In promulgating section 21.12(a), 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 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. CAT Contracting, Inc./Michigan Sewer Construction Co.--Reconsideration, B-234927.2, July 28, 1989, 89-2 CPD ¶ 87. 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, Loving was provided notice that the protest was filed and received a copy of the agency's report responding to the protest which thoroughly discussed the facts and issues involved. Loving, however, chose not to exercise its right to address the issues raised in Woodington's protest, despite the fact that the protest directly challenged its entitlement to award of the contract. We do not believe that Loving should now be afforded an opportunity to raise issues which it could have raised during the pendency of the protest, since our decisions clearly preclude a piecemeal presentation of evidence, information or analyses. Id.

Loving argues that we should consider its request for reconsideration despite its failure to participate in the original proceedings because the Coast Guard did not furnish it a copy of the protest, and, more generally, because it was never told that it had to participate in the protest. We do not consider the Coast Guard's failure to provide Loving a copy of the protest a sufficient reason to entertain the request for reconsideration. Even though Loving received an initial notice from the Coast Guard advising it of the general grounds of the protest, Loving made no effort to obtain a copy of the protest. Moreover, it is clear that Loving was fully aware of the issues in the

protest since it received a copy of the agency report, and nevertheless failed to participate in the proceedings. Thus, we do not think that the Coast Guard's failure to furnish a copy of the protest to Loving when it notified the firm that a protest had been filed in any way deprived Loving of an opportunity to participate in the protest.

Further, our regulations are published in the Federal Register and Loving thus is charged with constructive notice that it had an opportunity to participate in the original protest proceedings. Id. More fundamentally, the most reasonable course of action for a firm in Loving's position, whose entitlement to a contract is put into question by a protest, clearly is to participate in the protest proceedings.

In any event, Loving has failed to show any error of fact or law in our decision; rather, Loving reiterates arguments raised and considered in reaching our decision. Most notably, in arguing that the amendment it failed to acknowledge is not material because it had no effect on the bid price, Loving ignores the fundamental principle relied on in our decision that an amendment that changes legal relationship between the government and the contractor is material regardless of its effect on price or the work to be performed. As explained in our decision, the amendment at issue clearly changed the legal relationship between the parties since it gave the government the right to impose contractual penalties which otherwise would not be available to it.

The request for reconsideration is dismissed.



Ronald Berger
Associate General Counsel