

Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Electric Company--Request for
Reconsideration
File: B-237733.2
Date: January 30, 1990

DIGEST

1. Protest alleging improprieties apparent on the face of the solicitation but filed after the bid opening date is untimely.
2. Firm which submitted a "no bid" response to a procurement because contracting agency denied its request for an extension of the bid opening date, but which did not timely protest the agency's action, is not an "interested party" under the General Accounting Office's Bid Protest Regulations for the purpose of challenging the awardee's responsibility or the responsiveness of its bid.

DECISION

General Electric Company (GE) requests that we reconsider our November 15, 1989, dismissal of its protest against the award of a contract to ABB Power Generation Inc. under invitation for bids (IFB) No. DACW57-89-B-0072, issued by the Department of the Army for new winding for a failed generator at The Dalles Dam, Oregon.

We affirm our prior dismissal.

This requirement was synopsisized in the Commerce Business Daily on March 27, 1989, and the IFB was issued on May 19. The time for bid opening was twice extended, the last time to July 25. On the day before bid opening, GE requested a further extension of the bid opening date on the basis that since a June 30 amendment required it to provide a Certificate of Procurement Integrity with its bid, GE needed additional time to train its employees and collect the documentation needed for the certification.

On the afternoon of July 24, the contracting activity denied GE's request for an extension, advising GE that it would not have to submit its Certificate of Procurement Integrity with

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its bid, as long as it did so before award. GE, which states that it was of the view that this advice was incorrect, elected to submit a "no bid" response. The agency did receive bids from two other firms, which a representative of GE examined the week of bid opening.

On August 31, more than a month after bid opening and during the course of the technical review of the bids, the agency received a letter from GE in which GE stated that its "engineers have pointed out" that one specification requirement could not be met without conflicting with another. It illustrated its point by an analysis of the data given by "one of the bidders" [ABB] and closed with the suggestion that manufacturers be given more latitude in how they proposed to meet these requirements. Although GE did not state its letter was a "protest" and it did not request that any specific procurement action be taken, the Army states the contracting officer analyzed the specifications in light of GE's assertions, satisfied himself as to the specifications' propriety, and awarded the contract to ABB as the low responsive and responsible bidder on November 1.

GE filed a protest in our Office on November 8, requesting that the award to ABB be terminated and that the requirement be resolicited. GE objects to the award to ABB on the basis that ABB (1) failed to submit a signed Certificate of Procurement Integrity with its bid, (2) lacked the requisite experience to perform the contract, (3) took exception to the specifications, (4) provided drawings with Norwegian headings, and (5) failed to show compliance with the allegedly conflicting specification requirements about which GE had written the Army a month after bids were opened. We dismissed GE's protest on November 15 on the grounds that it was untimely, and not brought by an "interested party" insofar as the propriety of the award to ABB was concerned.

On November 24, GE filed a request for reconsideration challenging our dismissal. GE contends that it does have an economic interest in the procurement, and that its protest is timely because it was filed only 2 days after it received notification that the contract had been awarded to ABB. We have obtained the views of the Army in response to GE's submission and GE has had an opportunity to comment thereon. For the reasons stated below, we conclude that our dismissal was appropriate.

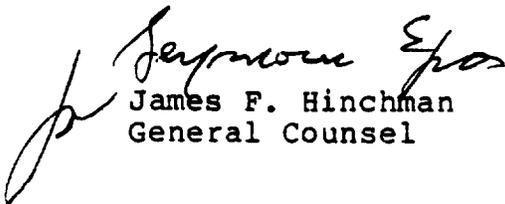
First, insofar as GE alleges that the solicitation contains conflicting specification requirements, its protest is untimely because it concerns alleged solicitation improprieties that were apparent from the face of the

solicitation and should have been filed prior to the bid opening date. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989).

Second, GE states it elected to "no bid" this project because the solicitation contained a certification requirement which GE considered itself incapable of meeting by the time set for bid opening which, in GE's view at least, was the deadline for submitting the certificate. In its request for reconsideration, GE states that the Army exhibited "extremely poor judgment" in denying GE's request for an extension of the bid opening date and that the Army "incorrectly asserted" that a bidder could submit the required certificate after bid opening but before award. If GE thought--as from these statements it apparently did--that the Army's July 24 denial of an extension was arbitrary or unreasonable, and that the Army's advice as to when the certificate could be submitted was legally incorrect, then GE was obligated to file a written protest on those grounds within 10 working days thereafter. 4 C.F.R. § 21.2(a)(2). It did not do so.

Third, we dismissed GE's protest challenging ABB's responsibility and the responsiveness of its bid because as a non-bidder GE does not possess the requisite status to be considered an interested party for the purpose of these issues. Our Office generally will only review protests that are filed by a party that meets the definition of an interested party. See T-L-C Sys., B-230086, Feb. 26, 1988, 88-1 CPD ¶ 204, which is defined by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(2) (Supp. IV 1986), and implemented in our Bid Protest Regulations, 4 C.F.R. § 21.0(a), as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract." Since GE did not bid, and therefore would not be in line for the award of this contract even if its protest was sustained, it is not an interested party and does not qualify as a protester under our Regulations.

Accordingly, our prior dismissal is affirmed.


James F. Hinchman
General Counsel