

M. Curcio



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

**Decision**

**Matter of:** Auto-X, Inc.  
**File:** B-238046.2; B-238046.3  
**Date:** June 6, 1990

Patricia A. Felser, for the protester.  
Gary J. Manny, Esq., for Twenty First Century International Fire Equipment and Services Corporation, an interested party.  
Col. Herman A. Peguese, Office of the Assistant Secretary, Department of the Air Force, for the agency.  
Mary Curcio, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

1. A bid received from a firm which at the time of bid opening is suspended from contracting with the government, may not be considered for award even if the suspension is no longer in effect at the time of award.
2. The General Accounting Office will not consider a protest against an award from a firm that was suspended from contracting with the government on bid opening date since the firm is ineligible for a contract award and, therefore, is not an interested party.

**DECISION**

Auto-X, Inc., protests the award of a contract under invitation for bids (IFB) No. F10603-89-0017, issued by the Department of the Air Force.

We dismiss the protest.

The IFB was issued for 570 fire extinguishers which, among other things, could be installed in 1 hour or less by one semi-skilled craftsman. On the October 13 bid opening date, seven bidders responded to the invitation with Auto-X submitting the apparent low bid. Subsequently, the Air Force determined that Auto-X was a nonresponsible bidder and, therefore, ineligible for award, because the authorized negotiator for Auto-X was suspended from contracting with

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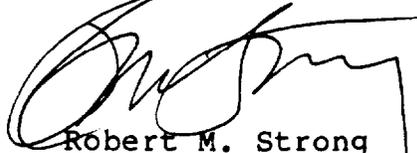
the government. The Air Force also determined that the remaining bidders were nonresponsive. Consequently, on December 5, the Air Force sent each bidder two notices, one to explain to the bidder the reasons why its bid was rejected and a second to notify the bidder that the solicitation was being canceled because no responsive bid from a responsible bidder was received. Following these notices, another bidder, Twenty First Century International Fire Equipment and Services Corporation, protested that its bid was improperly rejected. The Air Force agreed with that firm and intends to award it the contract.

By letter dated February 7, 1990, Auto-X protested to our Office that no unit other than the one supplied by Auto-X could meet the IFB requirement for a system capable of being installed in 1 hour or less by one semi-skilled craftsman. On February 22, Auto-X submitted an additional protest in which it informed our Office that its authorized negotiator was no longer suspended. Auto-X argued that since the suspension had been terminated before the date of award, the contracting agency had discretion to award the contract to Auto-X. Auto-X therefore argued that it should be awarded the contract as the lowest qualified bidder.

We have recognized that in a negotiated procurement the contracting agency has the discretion to accept the proposal of a suspended offeror where the suspension has been lifted by the time of award. Casde Corp., B-235202, Aug. 14, 1989, 89-2 CPD ¶ 136. However, where, as here, a sealed-bid procurement is involved, Federal Acquisition Regulation (FAR) § 14.404-2(g) requires the rejection of a bid that was submitted by a bidder who was suspended from contracting with the government on the bid opening date, and the contracting agency does not have discretion to decide otherwise. J.M. Cashman, Inc., B-225558, Apr. 15, 1987, 87-1 CPD ¶ 411. Since the Auto-X negotiator was suspended from contracting with the government on the bid opening date, Auto-X is ineligible to receive a contract award. Id. Since Auto-X would not be eligible for award of the contract, even if its protest against Twenty First Century

was sustained, Auto-X is not an interested party to maintain this protest. See Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1990); Ware Window Co., B-233926.3, Mar. 7, 1989, 89-1 CPD ¶ 251.

The protest is dismissed.



Robert M. Strong  
Associate General Counsel