



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ACandS, Inc..

File: B-241723

Date: February 22, 1991

Michael Schlauch for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
John Formica, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Conversations with agency personnel during which protester questioned bid specifications do not constitute a timely agency-level protest since oral protests are not permitted. Subsequent "clarification" of specifications submitted by protester with its bid, to the extent it can be regarded as a protest, is untimely since the contracting officer is not authorized to open a bid until the time set for bid opening.
2. Twelfth low bidder is not an interested party under General Accounting Office Bid Protest Regulations to protest that some bidders, including awardee, submitted unbalanced bids, where protester has not also protested against any possible award to all the intervening bidders.

DECISION

ACandS, Inc. protests the award of a contract to Midwest Environmental Control under invitation for bids (IFB) No. DACA45-90-B-0096, issued by the United States Army Corps of Engineers for the removal and disposal of hazardous materials at Ajo Air Force Station, Arizona.

We dismiss the protest.

The bid price schedule consisted of seven line items. Lump sum bids were requested for line items 1, 4 and 7. Line items 2, 3, 5 and 6 contained estimates of the amount of work to be performed under the items. Bidders were required to enter unit and extended prices based on these estimates. Award was to be made on the basis of the lowest bid for the total of all seven items.

Fifteen firms submitted bids in response to the IFB by the September 11, 1990, bid opening date. Two of the bids were subsequently found nonresponsive. Midwest submitted the low responsive bid at \$545,463, while the protester's bid of \$1,415,250 as set forth in the IFB schedule was the second highest received.

With its bid ACandS submitted a "Bid Price Clarification Sheet" explaining that for line items 2, 5 and 6, on which the bidders were to enter unit and extended prices, the estimated quantities of work set forth in the IFB were in the protester's view overstated by two to four times. The protester also submitted a "revised" bidding schedule on which it had changed the estimated quantities for these line items. The protester completed its version of the bidding schedule, and because the extended prices for line items 2, 5 and 6 had been reduced in direct correlation to the reduction in the estimated quantities for these line items, the total amount "bid" on this schedule was \$427,854.

ACandS admits that it would not be proper for the agency to accept its "bid" based on the estimates it unilaterally altered but it does argue that the estimated quantities of contaminated materials to be removed and disposed of under line items 2, 5 and 6 of the bid schedule are greatly overstated and the requirements are unclear. The protester states that it raised its concerns in conversations with agency personnel prior to bid opening.

To the extent ACandS is arguing that the estimates listed in the IFB are defective or that the specifications are otherwise unclear, the protest is untimely and will not be considered. Our Bid Protest Regulations require that a protest alleging an apparent solicitation impropriety such as that raised here must be filed before bid opening in order to be considered timely. 4 C.F.R. § 21.2(a)(1) (1990). Contrary to the protester's assertion, its conversations with agency personnel regarding the bid schedule do not constitute a timely agency-level protest such that a subsequent protest to our Office would be timely, since protests must be in writing. Federal Acquisition Regulation § 33.101; Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ 320. Further, even if the "Bid Price Clarification Sheet" submitted with the protester's bid could be regarded as an agency-level protest, it is still untimely. A protest filed with a bid cannot be considered as filed before opening since the contracting officer is generally not authorized to open the bid until the time set for bid opening. Americover Co., B-234352, supra.

The protester also argues generally that some of the bidders, including the awardee, appear to have submitted unbalanced bids in that they included much of the costs properly

associated with the unit price/extended price line items into their prices for the lump sum line items.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 (1988), and our Regulations, 4 C.F.R. § 21.1(a), a party must be "interested" in order to have its protest considered by our Office. A party is interested if its direct economic interest would be affected by the award or failure to award a contract, 4 C.F.R. § 21.0(a), which generally means that the protester is next in line for award of a contract if the challenged bidder or bidders are eliminated from the competition. Eastern Trans-Waste of Maryland, Inc., B-234883, Apr. 19, 1989, 89-1 CPD ¶ 391. In applying this rule, we have consistently refused to consider the merits of a protest where the protester was other than the next lowest bidder and failed to challenge all bids that stood between it and award. Id.

There are 11 other bids between the bid of ACandS and that of the awardee. The protester has only made the general allegation that some of these intervening bids appear unbalanced, and does not challenge all the bids that stand between it and award. Thus, it is not an interested party under our Regulations to protest that the awardee's bid is unbalanced.

The protest is dismissed.



John Brosnan
Assistant General Counsel