



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Monterey Advanced Imaging Center  
**File:** B-253152.3  
**Date:** November 19, 1993

Hugo Gerstl, Esq., Gerstl & Gorman, for the protester.  
Colonel Riggs L. Wilks, Jr., and Major Bobby G. Henry, Jr.,  
Department of the Army, for the agency.  
Catherine E. Pollack, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Where protester did not submit a bid because it did not receive solicitation amendment containing revised bid opening date, and nonreceipt was not due to any agency attempt to deliberately exclude the protester, protester was not prejudiced by allegedly improper award to the only bidder; General Accounting Office therefore has no basis to consider merits of protest allegations.

### DECISION

Monterey Advanced Imaging Center protests the award of a contract to Alliance Imaging, Inc. under invitation for bids (IFB) No. DAKF03-92-B-0062, issued by the Department of the Army for magnetic resonance imaging (MRI) services for Fort Ord, California. Monterey alleges that Alliance's MRI facility does not meet all of the IFB requirements.

We dismiss the protest.

Monterey was the incumbent contractor for MRI services at Fort Ord. In February 1993, Monterey learned that the agency had issued a new solicitation for the services, and requested a copy. Monterey later received amendment No. 0002 to the IFB which extended the bid opening date indefinitely. On March 30, the agency issued amendment No. 0003, which established a new bid opening date of April 12. Monterey never received the amendment, and therefore did not submit a bid. When Monterey learned that it had missed the bid opening, it filed a protest in our Office alleging that the agency had deliberately excluded it from the competition. We denied the protest, concluding that the record did not show that the agency acted deliberately to preclude Monterey from competing, or otherwise violated applicable regulations governing the

distribution of amendments. Monterey Advanced Imaging Ctr., B-253152, Aug. 24, 1993, 93-2 CPD ¶ 118.

Monterey now protests the proposed award to Alliance, the only firm that submitted a bid, alleging that the company's MRI facility does not meet the requirement for a fixed (as opposed to mobile) facility. Monterey asks that we recommend that the agency cancel the IFB and resolicit the requirement.

Monterey's protest essentially amounts to an allegation that the agency improperly waived an IFB requirement for the awardee. In reviewing such allegations, we examine whether the protester was prejudiced by the alleged waiver; that is, whether the protester would have been in a position to receive the award absent the waiver. See Propber Mfg. Co., Inc., B-245366, Dec. 30, 1991, 92-1 CPD ¶ 14. We will sustain the protest only if there is a reasonable possibility that the protester would have been the successful offeror--for example, by offering a lower-cost item--if it had known that the agency would not enforce the stated requirements. See, e.g., Goodyear Tire & Rubber Co., 72 Comp. Gen. 28 (1992), 92-2 CPD ¶ 315; see generally Logitek, Inc.--Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401. Under this standard, in order to sustain Monterey's protest and recommend resolicitation of the requirement, we would have to conclude--assuming the agency in fact waived the fixed facility requirement for Alliance--that Monterey would have acted differently had it known that the agency would not enforce the requirement, and that it might then have been in a position to win the award.

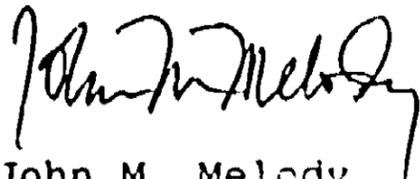
We cannot make those conclusions here. Since Monterey did not submit a bid--through no fault of the agency, as our earlier decision held--there is no possibility that Monterey would have acted differently, or been eligible for the award, had it known the agency would waive the fixed facility requirement as alleged. Absent any such prejudice to Monterey, we would have no basis to sustain the protest

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We have also sustained protests against alleged waiver or relaxation of solicitation requirements where the record shows that the waiver may have precluded prospective offerors from competing for the requirement. See, e.g., Goodyear Tire & Rubber Co., supra; ManTech Advanced Sys. Int'l, Inc., B-240136, Oct. 26, 1990, 90-2 CPD ¶ 336. Nothing in the record suggests that was the case here.

even if the record established that Alliance's bid was nonresponsive to the requirement. We therefore will not consider the matter further.

The protest is dismissed.



John M. Melody  
Assistant General Counsel