

Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Magnavox Electronic Systems Company--
Reconsideration

File: B-258711.3

Date: April 3, 1995

DECISION

Magnavox Electronic Systems Company requests reconsideration of our decision, Scientific-Atlanta, Inc.; Magnavox Elec. Sys. Co., B-258711; B-258711.2, Dec. 8, 1994, 94-2 CPD ¶ 229, in which we dismissed Magnavox's protest concerning the acceptability of its late bid submitted in response to invitation for bids (IFB) No. S-DTS-PO-94-B-2031, issued by the Department of State.

We deny the request for reconsideration.

Magnavox alleged in its protest that it unsuccessfully attempted to submit its bid to the contracting officer after bid opening on September 20, 1994. Magnavox alleged that agency action was the paramount cause for the late delivery and that the agency refused to assume custody of the late-delivered bid. The agency awarded the contract on September 23 to MacKay Communications, Inc., the lowest-priced responsive and responsible bidder, at a unit price of \$15,650. During the course of the protest, Magnavox alleged that it bid a unit price of \$16,475.

Magnavox protested first to the contracting agency and then to our Office. Magnavox did not protest the award to MacKay in its agency-level protest, nor in its initial protest to our Office. Concurrently, Scientific-Atlanta, Inc. protested the award to MacKay alleging that MacKay's bid should have been rejected as nonresponsive. At the agency's request, we permitted the agency to submit one report in response to both protests. Both protesters thus had the opportunity to comment on all issues addressed by the agency's report. We dismissed Scientific-Atlanta's protest finding that MacKay's bid was responsive on its face and that Scientific-Atlanta's protest involved a challenge to the agency's affirmative determination that MacKay was responsible, which is not subject to our Office's review. We dismissed Magnavox's protest because, even if we would have sustained Magnavox's protest and ruled that the agency should have considered Magnavox's late bid, Magnavox,


with a higher bid than MacKay, was not eligible for award. Magnavox was thus not an interested party to file its protest of the agency's failure to consider its bid. See 4 C.F.R. § 21.0(a) (1995).

Magnavox requests reconsideration of our decision finding MacKay's bid responsive. However, Magnavox did not protest this issue. In fact, Magnavox's first reference to the responsiveness of MacKay's bid was in its comments to the agency's joint report. To be timely, Magnavox should have protested the award within 10 working days after award to MacKay on September 23, since MacKay's bid was available for inspection at bid opening. See Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210. Magnavox submitted its comments on November 28, more than 2 months after award. Therefore, Magnavox's protest of the award to MacKay is untimely under our Bid Protest Regulations. See id.; 4 C.F.R. § 21.2(a)(2).

As noted, Magnavox's timely protest was limited to the issue of whether its late bid should have been considered for award. Since Magnavox's bid price of \$16,475 would not displace MacKay's as the low bid, we correctly determined that Magnavox was not an interested party to protest the exclusion of its late bid. See 4 C.F.R. § 21.0(a).¹ As Magnavox's basis for requesting reconsideration concerns our decision on the Scientific-Atlanta protest, Magnavox provides no basis to warrant reconsideration of our decision on Magnavox's protest. See 4 C.F.R. § 21.12.

To the extent that Magnavox requests reconsideration of our decision dismissing Scientific-Atlantic protest, only the protester, a federal agency involved in the protest, or an interested party participating in the protest may request reconsideration. 4 C.F.R. § 21.12(a). After an award has been made, as here, only the awardee is an interested party for the purposes of participating in a protest. 4 C.F.R. § 21.0(b). Since Magnavox was not an interested party for the purposes of participating in Scientific-Atlanta's protest, it is not eligible to request reconsideration of our decision on that protest. See 4 C.F.R. § 21.12.

The request for reconsideration is denied.


 for Robert P. Murphy
 General Counsel

¹Had it not been excluded, Magnavox's bid would have been the second lowest.