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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-203257.2

September 18, 1981

Security Assistance Forces & Equipment oHG
P.O. Box 800 826
D-623 Frankfurt/Main 80
Federal Republic of Germany

Gentlemen:

We refer to your letter of August 11, 1981, requesting that we reconsider our decision Security Assistance Forces & Equipment, oHG, B-203257, August 3, 1981, 81-2 CPD, in which we denied in part and dismissed in part your protest against the issuance by the U.S. Command, Berlin and U.S. Army, Berlin, of a delivery order to Siemens AG for smoke detectors. We find no basis to alter our decision.

Your original protest asserted that Siemens AG's offer was higher than yours and thus that if the award price was lower than your offered price the procuring activity must have negotiated the lower price improperly. You also protested that the contractor was not meeting the delivery schedule stated in the solicitation, which the Army should have known would happen before it awarded the contract.

We denied the protest on the first issue because the record before our Office showed that Siemens AG's original offer was lower than yours. (Also, the Army reported that no negotiations were conducted under the solicitation.) Regarding the second matter, the record showed that Siemens AG agreed in its offer to the four-week delivery schedule, but that the date for the delivery of the items in fact was extended after award. We dismissed your protest on the issue, however, because there was nothing to suggest that the Army awarded the contract with the intention to alter the delivery schedule after award to the prejudice of the other competitors, or that the change was so substantial that it distorted the competition on which the award was based.

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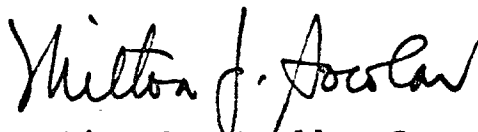
In your reconsideration request, you state that the Army's criminal investigation unit is looking into the procurement. You speculate that the investigation will show (1) that the handwritten words "4 weeks" in Siemens AG's offer, which evidenced the firm's agreement to meet the four-week delivery schedule, were written by someone in the procuring activity, not by Siemens AG, and (2) that the activity actually knew before awarding the contract to Siemens AG that the firm could not deliver the smoke detectors within four weeks.

As we stated in our original decision, the protester has the burden to affirmatively prove its case. The burden is met by appropriate factual and legal presentations and arguments, not by unsupported suggestions as to what might have happened. Your speculation that there is a report of the investigation and what its findings might be clearly do not meet your burden of proof.

Further, you state that the Army review is being conducted by the criminal investigation unit. Presumably, any findings of improprieties would involve violations of criminal laws. The Department of Justice is responsible for enforcing criminal laws, not the General Accounting Office. See Tyco, B-199632, March 24, 1981, 81-1 CPD 220.

We will not consider the matter further.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Milton J. Fowler". The signature is written in a cursive style with some loops and flourishes.

Acting Comptroller General
of the United States