

DECISION



1975 8 Mr. Lieberman
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203946

DATE: October 13, 1981

MATTER OF: Monarch Construction Company

DIGEST:

Protest against an award which was based on a calculation of bids, including an alleged improper proprietary alternate, which was permitted under the solicitation, is untimely and will not be considered on the merits, since the basis of the protest was apparent from the solicitation, but the protest was not filed until after bid opening.

Monarch Construction Company (Monarch) protests the award of a contract to Universal Contracting Corporation (Universal) under a solicitation for project Nos. 539-021 and 539-016 issued by the Veterans Administration (VA). The solicitation is for two construction projects involving expansion and renovation at the VA Medical Center in Cincinnati, Ohio.

Monarch states that it is the low bidder under this solicitation, except when the bid price calculation includes alternate IB, in which case Universal's bid is low. Monarch objects that alternate IB consists of the installation of certain controls which are proprietary to Honeywell Engineering (Honeywell). Monarch asserts that the inclusion of alternate IB in the bid calculations had the effect of restricting competition and placed Monarch at a competitive disadvantage with respect to bidders which used Honeywell equipment in their item I base bids.

Monarch's protest is untimely.

The original solicitation had required the use of Honeywell temperature and humidity control equipment as part of the item I base bid. By two amendments, the requirement for Honeywell equipment was deleted and alternate IB was added in which bidders were to indicate the price of providing the work required to connect

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the expansion construction under the item I base bid with existing Honeywell control equipment at the medical center. The amended solicitation consisted of items I and II, alternates IA and IB under base item I, and alternate IIA under base item II. Bidders were instructed to submit prices for all items and alternates. The solicitation specifically advised that the low bidder would be determined on the basis of total price for items I and II alone or on the basis of items I and II plus any number of the alternates. The solicitation also indicated that the contracting officer's decision concerning which combination to use was to be based on the Government's needs and the availability of funds at the time of award.

Bid opening occurred on June 2, 1981. Monarch did not protest to either the VA or to our Office prior to bid opening. By letter dated June 11, 1981, Monarch protested to VA on essentially the same grounds that it has now protested to our Office. Monarch's protest to our Office was filed on July 7, 1981, after it learned that the VA was contemplating award to Universal as the low bidder based on the inclusion of all three alternates.

Under our Bid Protest Procedures, a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed before the bid opening in order to be considered. 4 C.F.R. § 20.2(b) (1) (1981). Monarch contends that its protest should be considered timely because it was not until after bid opening that it realized that alternate IB would be included by VA in its calculations and that it is only as a result of this inclusion that Monarch is not the low bidder. However, the solicitation language expressly indicated that alternate IB could be considered. Thus, Monarch was made aware in the solicitation that the alleged improper proprietary alternative could be included as a determining factor in the bid calculations. Since Monarch failed to protest to either VA or our Office prior to bid opening, its protest is untimely.

Monarch has pointed out that under our Bid Protest Procedures, 4 C.F.R. § 21.2(c) (1981), we may consider an untimely protest for good cause shown or where a protest raises issues significant to procurement practices or procedures. The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. McCaleb Associates, Inc., B-197209,

September 2, 1980, 80-2 CPD 163. The significant issue exception is limited to issues of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. McCaleb Associates, Inc., supra. Monarch has neither demonstrated good cause nor raised issues of such widespread interest as to warrant application of these exceptions.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel