

DECISION



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

FILE: B-207682.2

DATE: March 30, 1983

MATTER OF: Coleman Industrial Construction
Company--Reconsideration

DIGEST:

1. Request for reconsideration of prior decision is denied where protester has not shown that its conclusion--that contracting officer properly permitted low bidder to correct a mistake-in-bid--resulted from an error of law or fact.
2. Where protester initially files timely protest and later supplements it with new grounds in support of its request for reconsideration of prior decision, new bases for protest must independently satisfy timeliness requirements of GAO Bid Protest Procedures.

Coleman Industrial Construction Company requests reconsideration of our decision, Coleman Industrial Construction Company, B-207682, September 8, 1982, 82-2 CPD 213, in which we denied Coleman's protest concerning the award of a contract for construction and demolition work by the Department of Energy (DOE) under invitation for bids (IFB) No. DE-FB96-82-P010572.

In our prior decision we considered only the issue of whether the contracting officer properly permitted L. S. Womack, Inc., the low bidder, to correct a mistake in its bid. We upheld the contracting officer's decision because we concluded that Womack had presented clear and convincing evidence showing that an error occurred, and its intended bid price.

In its request for reconsideration, Coleman does not mention the mistake-in-bid issue which was the subject of our prior decision. Instead, Coleman states that it has reason to believe that Womack is a large business concern and therefore was improperly awarded the contract under the solicitation, which was a total

small business set-aside. Coleman asserts that Womack initially certified itself in its bid as "other than [a] small business [concern]" but that the contracting officer, without notice to the other bidders, subsequently permitted Womack--during the time period in which Womack's request for bid correction was being considered--to amend this designation and certify itself as a small business concern. Coleman further complains that the contracting officer, by engaging in "deceptive" practices, failed to provide the bidders the opportunity to file a size protest challenging Womack's small business size status. The allegation concerning "deceptive" practices, otherwise unidentified, apparently refers to statements allegedly made by the contracting officer to representatives of Coleman after bid opening that Womack had requested permission to withdraw its bid. Coleman then pursued a size protest of the second low bidder under the mistaken assumption that only withdrawal of Womack's bid would be permitted. By the time Coleman was informed that Womack had been permitted to correct its bid and had been awarded the contract, the period allowed for filing size status protests had passed. See Federal Procurement Regulations § 1-1.703-2 (1964 ed. amend. 192).

Although Coleman's initial protest included an account of some of these events, its allegation was that DOE, motivated by bad faith, improperly permitted Womack to correct its bid by a substantial amount (from a total of \$292,880 to a total of \$470,322) and to an amount which was only \$28,665 below the second low bid. In its report to our Office, DOE explained why in its opinion the work papers, affidavit and other documents obtained from Womack provided clear and convincing evidence of the existence of a mistake and the intended bid which is required by the Federal Procurement Regulations as a prerequisite to bid correction. DOE further stated that it considered, but found inapplicable to the facts of this procurement, decisions of our Office in which correction of a bid was not permitted when the corrected bid would come too close to the next low bid.

Coleman was furnished a copy of DOE's report. In response to it, Coleman stated that DOE had "displayed extreme bad faith in the handling of this matter"; asserted, with no specific analysis, that Womack had not

provided clear and convincing evidence of the existence of the mistake and its intended bid; and expressed the general conclusion that DOE's action "works to undermine the integrity of the Government contracting system."

In our decision of September 8, 1982, we examined the record upon which DOE had permitted Womack to correct its bid and concluded that DOE had a reasonable basis for its determination and that the record contained no evidence supporting Coleman's allegation of bad faith.

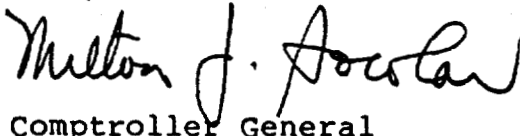
A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.9(a) and (b) (1982). Since our decision concerned the propriety of allowing Womack to correct a mistake in bid and Coleman has not even mentioned this issue in its request for reconsideration, it has not identified any error of law or fact warranting reversal of our decision. Coleman's request for reconsideration, therefore, is denied.

The focus of Coleman's request for reconsideration--the contracting officer's allowing Womack to change its size certification without notifying other bidders in order that they could challenge Womack's size before the Small Business Administration--actually raises a new basis for protest. Coleman began to articulate this new basis for protest--that had it been able to timely protest Womack's size status, it would have prevailed and Coleman would have received the award as the next low eligible bidder--in a telegram filed with our Office on September 1, 1982. In subsequent letters dated September 21 and November 3, 1982, Coleman supplemented its position and asked that we reconsider our decision on the basis that we failed to discuss the propriety of the contracting officer's "handling" of Womack's bid. Since this issue was not previously raised in the initial protest concerning Womack's correction of its mistake in bid, the complaint must independently satisfy the timeliness requirements of our Bid Protest Procedures. See generally James G. Biddle Company, B-196394, February 13, 1980, 80-1 CPD 129. Our Procedures require a protest of this type to be filed "not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 21.2(b)(2). Moreover, we have held that a protester which is

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challenging an award or proposed award on one ground should diligently pursue information which may reveal additional grounds of protest. Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172.

Here, Coleman was specifically informed by the contracting officer not later than May 17, 1982, of the award to Womack, and Coleman had also been previously aware of the alleged representations made by the contracting officer concerning Womack's request for withdrawal rather than correction of its bid. Since Coleman did not raise these matters until September 1, 1982, clearly beyond the 10-day period permitted by our Procedures, they are untimely and will not be considered.

for 
Comptroller General
of the United States