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DECISION



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

FILE: B-212395.8

DATE: August 13, 1984

MATTER OF: Swintec Corporation--Reconsideration

DIGEST:

1. The "significant issue" exception to our rules concerning untimely protests is not applicable to a protest charging that a solicitation contained overly restrictive specifications.
2. We will not consider allegations made by a party that would be ineligible for award even if all issues raised were resolved in its favor.
3. Prior decision dismissing protest is affirmed because protester has failed to demonstrate that decision was based on erroneous interpretation of fact or law.

Swintec Corporation (Swintec) again requests reconsideration of our decision in Swintec Corporation, Canon U.S.A., Inc., Olympia USA, Inc., Guernsey Office Products, B-212395.2, B-212395.3, B-212395.4, B-212395.5, Apr. 24, 1984, 84-1 C.P.D. ¶ 466. In that decision, we sustained Swintec's protest that the General Services Administration (GSA) improperly rejected Swintec's offer of its model 1146 CM electronic memory typewriter under multiple-award schedule (MAS) solicitation No. YGE-B-75246. We dismissed Swintec's protest against the single-award invitation for bids (IFB) No. FGE-C4-75249-A for a governmentwide requirements contract for single element, electric/electronic and typebar typewriters. Swintec requests that we reconsider this dismissal. Swintec alleges that IFB No. FGE-C4-75249-A contained overly restrictive specifications and that GSA's consideration of life cycle cost (LCC) factors in the selection process was inappropriate.

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Our earlier decision to dismiss Swintec's protest was based on our conclusion that Swintec is not an "interested party" under our Bid Protest Procedures. Our Procedures require a party to be "interested" before we will consider the allegations made. 4 C.F.R. § 21.1(a) (1983). We will not consider a party's interest sufficient where that party would not be eligible for award even if all the issues raised were resolved in its favor. Anderson Hickey Company, B-210252, Mar. 8, 1983, 83-1 C.P.D. ¶ 235.

We found that the IFB in question solicited offers to provide typewriters with a minimum carriage width between 15 and 18 inches; Swintec offered to provide typewriters with carriage widths of 14 inches. Since Swintec's offer did not meet the minimum requirements established by the IFB, it would not have been eligible for award and was not an interested party.

Swintec asserts that its offer should have been eligible for award because GSA's determination that the government needed typewriters with 15-inch carriages was arbitrary and overly restrictive. However, Swintec did not raise the issue of the allegedly defective specifications until 30 days after bids were opened. Our Bid Protest Procedures require a protest to be filed within 10 working days from the time the protester knew or should have known of the basis for its protest. 4 C.F.R. § 21.2 (1983). Accordingly, Swintec's protest concerning the necessity of typewriters with 15-inch carriages is not for our consideration.

Swintec requests that we apply the "significant issue" exception which is applicable to untimely protests. This exception provides that an untimely protest may be considered if it raises a question of significant interest to the procurement community. 4 C.F.R. § 21.1(c) (1983).

We deny the request.

We note that the substance of Swintec's protest concerning LCC analysis was addressed in our original decision in response to similar charges made by Canon U.S.A., Inc. Accordingly, even if Swintec were considered an interested party, it appears that our present consideration of the issues it raises would be redundant. In any event, we do not believe Swintec's protest of the 15-inch carriage requirement in the IFB falls within the significant issue exception for untimely protests. We stated in Sequoia Pacific Corporation, B-199583, Jan. 7, 1981, 81-1 C.P.D. ¶ 13, that:

"In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a matter of widespread interest or importance to the procurement community, see e.g., Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225; Wyatt Lumber Company, B-196705, February 7, 1980, 80-1 CPD 108; Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159."

The broad discretion afforded a procurement agency to determine the needs of the government for a particular procurement is not of widespread concern to the procurement community. Manville Building Materials Corporation, B-210414, Mar. 15, 1983, 83-1 C.P.D. ¶ 258. Furthermore, the issue of an agency's determination of its minimum needs has been the subject of numerous previous GAO decisions. Potomac Industrial Trucks, Inc., B-204648, Jan. 27, 1982, 82-1, C.P.D. ¶ 61; Allied Security Inc., of Maryland, B-201365, May 4, 1981, 81-1 C.P.D. ¶ 337. As we have often stated, the significant issue exception must be strictly construed and sparingly used to prevent our timeliness rules from being rendered meaningless. The Torrington Company--Reconsideration, B-210877.3, Nov. 18, 1983, 83-2 C.P.D. ¶ 581.

Since Swintec has not shown any error of law or fact which would warrant reversal, we affirm our prior decisions on this matter.

for 
Comptroller General
of the United States