

DECISION



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

FILE: B-217573 **DATE:** May 15, 1985
MATTER OF: BECO Corporation

DIGEST:

Protest that it was unfair of the procuring agency to restrict the prebid inspection visit of construction site to the time announced in the IFB, and to deny protester access to the worksite when requested on the last working day prior to bid opening, is denied. As long as the solicitation gave bidders the same opportunity for a prebid site inspection, a bidder who elects not to attend the inspection must assume attendant risks in formulating its bid, or choose not to bid at all.

BECO Corporation protests under invitation for bids (IFB) No. N62474-85-B-7541 issued by the Naval Facilities Engineering Command for the repair and replacement of damaged drain grates at Moffett Field, California. BECO protests that the procurement was conducted unfairly in that its representative was not allowed to visit the worksite on Friday, January 4, before bid opening on Monday, January 7, 1985, and asserts that had it been allowed to visit the site its bid, which was second low, would have been even lower.

We deny BECO's protest.

A threshold question is whether BECO's protest is timely. The Navy urges that since the protest is based on a solicitation provision regarding site visitation, an alleged impropriety that was apparent prior to bid opening, the protest is untimely under section 21.2(b)(1) of our Bid Protest Procedures applicable to this case (4 C.F.R. part 21 (1984)), which requires that protests based on improprieties in the solicitation which are apparent prior to bid opening be filed prior to bid opening. Thus, the Navy contends that BECO's protest filed with our Office on January 11, after bid opening on January 7, is untimely and not for our consideration on the merits. In our view, BECO's protest of the Navy's denial of access to the site when it occurred on January 4 is consistent with an oral protest of the

solicitation's site visitation provision, and the Navy's persistence in denying such access was consistent with an agency denial of the protest. In this regard, we have held that the intent to protest may be conveyed by an expression of dissatisfaction and a request for corrective action. Small Business Systems, Inc., B-213009, July 26, 1984, 84-2 C.P.D. ¶ 114; Worldwide Marine, Inc., B-212640, Feb. 7, 1984, 84-1 C.P.D. ¶ 152. Therefore BECO's subsequent protest to our Office on January 11, filed within 10 working days of the denial of the January 4 agency level protest is timely under section 21.2(a) of our Procedures.

The solicitation provided for a prebid site visitation as follows:

"PRE-BID SITE VISITATION: Bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract to the extent such information is reasonably obtainable. (See General Provisions Clauses titled "Site Investigation", "Security Requirements", and "Station Regulations"). In no event will a failure to inspect the site constitute grounds for withdrawal of a bid after opening or for a claim after award of the contract. Inquiries and arrangements for attendance can be made by calling (415) 966-4992, 24 hours in advance of the site visit, which is scheduled for 0900, Tuesday, 18 December 1984."

BECO maintains that after receiving notice of the IFB in the Commerce Business Daily it requested, received, and reviewed the plans and specifications for this requirement and requested quotations from foundries for the supply of the steel grates. BECO then states that because it had not received the price quotes for steel grates from the foundries it was not ready to visit the site on the date specified in the solicitation. On January 3, 1985, when it received the requested price quotations, BECO decided to send its Superintendent/Estimator to Moffett Field on Friday, January 4; and when the Navy refused to allow BECO's representative to visit the site on that Friday, BECO alleges it was unable to confirm its potentially low bid and raised it instead. BECO contends that the denial of its access to the site was the reason it did not receive the contract award.

The Navy advises that there are sound policy reasons for restricting site visitations to one time period, principal among which is to have all prospective bidders see the same things and receive the same information so as to avoid the potential for confusion when individual bidders visit separately. There is merit to the Navy's position.

There is no obligation on the part of the agency in every procurement to accommodate the individual preferences of every prospective offeror by providing unlimited access to facilities for the purpose of site visitations. See for example Integrity Management International, Inc., B-213574, Apr. 19, 1984, 84-1 C.P.D. ¶ 449. Nor does a proper procurement require that the procuring agency remove every uncertainty from every prospective offeror's mind. Security Assistance Forces & Equipment International, Inc., B-199366, Feb. 6, 1981, 81-1 C.P.D. ¶ 71, affirmed on reconsideration, B-199366.2, Mar. 17, 1981, 81-1 C.P.D. ¶ 199. We judge the propriety of a particular procurement not on whether every potential offeror was included, but whether reasonable prices were obtained through adequate competition, unless there is evidence that the agency consciously attempted to exclude a possible competitor. Adams-Keleher, Inc., B-213452, Mar. 6, 1984, 84-1 C.P.D. ¶ 273. In this instance the Navy received six competitively priced bids--including BECO's second low bid--and it appears that only BECO had any difficulty with the site visitation requirement. On this basis we cannot say that competition was inhibited. See Adams-Keleher, Inc., B-213452, supra. BECO's protest then is based on the allegation that the Navy's denial of access to the worksite on January 4 was a deliberate attempt to exclude BECO from competition. The record here does not support such a finding.

The solicitation provided for a site visitation scheduled for 9:00 a.m., Tuesday, December 18, 1984. In its protest, BECO states that it was awaiting price quotations on the steel grates and therefore was not ready to visit the site until January 4, 1985. The Navy's report in response to the protest, however, includes a memorandum prepared by the Navy's contract administrator concerning a telephone conversation on January 8 with BECO's president in which the latter stated:

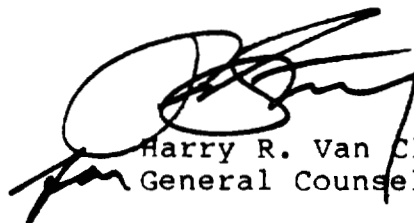
"that he did not attend the tour on the date it was held because his representative was working in Phoenix and he knew that he would be coming here [Moffett Field] on return to Idaho and that he did not want to spend the extra fare for his man to be here in December."

In its comments on the agency report, BECO did not dispute this account of the conversation.

BECO has not fully explained how the foundry price quotations on steel grates would affect the local conditions to be inspected at a site visit so as to justify the necessity of a special site visit. The Navy reports that it restricted bidders to a single site visit for policy reasons aimed at avoiding confusion and assuring that all bidders would be competing on the basis of the same information. BECO maintains that the solicitation's site visitation provision, set out above, does not explicitly state that December 18 was the only visitation date and the protester characterizes the Navy's later refusal to allow BECO to inspect the site as unfair. We note, however, that the solicitation did not provide for individual inspections or otherwise imply that future arrangements with individual contractors for dates other than December 18 would be accommodated. We also note that BECO made no "inquiries and arrangements for attendance" as provided in the solicitation provision or attempt to obtain prior approval of a special visit based on any alleged extenuating circumstance. Rather, BECO arrived at Moffett Field on the Friday before the Monday bid opening seeking access and the right of inspection. The conclusion we draw from these facts is that BECO was responsible for the situation in which it found itself.

Under the circumstances, we know of no basis to support the position that the Navy acted deliberately to exclude the protester from competing; and we find that the Navy did not act unreasonably in refusing to provide a site visit for BECO on January 4. Since the solicitation gave BECO the same opportunity as all other bidders for a prebid site inspection, the fact that BECO elected not to attend the scheduled inspection means it must assume the attendant risks in formulating its bid, or choose not to bid at all.

The protest is denied.



Harry R. Van Cleve
General Counsel