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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: WEMS, Inc.--Request for Reconsideration

File: B-222553.2

Date: July 30, 1986

DIGEST

1. Protest based on the fact that a contracting officer has not made required determinations before exercising an option under a requirements contract is premature when the award covers only a first article and the first year's production quantity.
2. When, in request for reconsideration, a protester merely restates the grounds of its original protest, with additional arguments and citations, the General Accounting Office will not consider the arguments that could have been made initially.
3. When a contracting officer suspects a mistake in a bid and requests verification in accordance with the Federal Acquisition Regulation, such action does not constitute "two bites at the apple" or impair the competitive bidding system.
4. A bidder may obtain a required security clearance any time before award, because this constitutes a matter of bidder responsibility.

DECISION

WEMS, Inc. requests reconsideration of our decision in WEMS, Inc., B-222553, June 6, 1986, 86-1 CPD ¶ 533. We denied the protest in part and found the remainder untimely. In the request for reconsideration, WEMS presents further arguments regarding its original basis of protest and alleges for the first time that the contracting officer improperly allowed the awardee to verify its bid. We affirm our decision.

WEMS' original protest alleged that the U.S. Army Missile Command's (MICOM) use of a requirements contract to acquire spare parts for the DRAGON weapons system was inappropriate. Specifically, the firm argued that the estimates for option quantities were inaccurate; that prices for these quantities (to be delivered in the next 4 years) should not have been evaluated; and that the solicitation improperly did not include a price escalation clause, in violation of a policy adopted by MICOM 2 days after bid opening. We determined that WEMS' protest was without legal

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merit except for that portion concerning the price escalation clause, which we viewed as untimely because it had not been filed before bid opening.^{1/}

In its request for reconsideration, WEMS argues that during this acquisition, the agency confused requirements contracts and option contracts, thus also circumventing the regulations applicable to option contracts. The two types of contracts are not mutually exclusive. The Federal Acquisition Regulation (FAR), 48 C.F.R. § 17.202(b)(3) (1985), specifically permits the use of options to extend the term of a requirements contract. Here, only the initial contract, covering a first article and the first year's production quantity, has been awarded. To the extent that WEMS is protesting that the contracting officer has not made the determinations necessary under FAR, 48 C.F.R. § 17.207, before exercise of an option, the protest is premature.

As for WEMS' other bases for requesting reconsideration, except as to those discussed below, the firm merely restates the grounds of its original protest, with additional arguments and citations concerning estimates and evaluation based on estimates. Since WEMS could have made these arguments initially, we will not consider them now. J.R. Youngdale Construction Co., Inc.--Reconsideration, B-219439.2, Feb. 20, 1986, 86-1 CPD ¶ 176; 4 C.F.R. § 21.12(a) (1986). Further, as noted in our initial decision, the lack of a price escalation clause was a deficiency apparent on the face of the solicitation. MICOM's subsequent adoption of a policy favoring the use of such clauses does not affect the timeliness of a protest concerning the alleged deficiency.

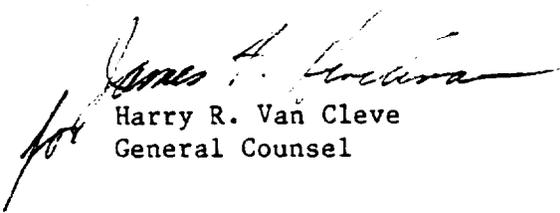
Assuming that WEMS obtained the information regarding the fact that the awardee, Texas Mil-Tronics, was asked to verify its bid through a Freedom of Information Act (FOIA) request, and that protest on this ground is timely, we find no legal merit to WEMS' allegations. At bid opening, Mil-Tronics was the apparent low bidder. The contracting officer, after examination of all bids, suspected that Mil-Tronics might have made a mistake in preparing its bid, because its option prices were the same as its first-year prices. Pursuant to the FAR, 48 C.F.R. § 14.406-1, the contracting officer requested that Mil-Tronics verify its bid, which the firm did. The FAR requires a contracting officer to follow these procedures when he suspects that a mistake has been made, and such actions do not undermine the competitive bidding system. OTKM Construction Inc.--Reconsideration, B-219619.2, Jan. 16, 1986, 65 Comp. Gen. ___, 86-1 CPD ¶ 53.

^{1/} Although WEMS also alleged that MICOM was in violation of certain regulations applicable to multiyear contracts, we did not discuss that aspect of WEMS' protest because there was no indication, nor is there any now, that a multiyear contract is involved here.

WEMS claims that this was "two bites at the apple," and that it should have been given a similar opportunity to verify its bid. WEMS claims it would have confirmed that its price for the 4 option years was intended to be the same as the base year price, although its original bid included annual increases for inflation. WEMS did not make a mistake in its bid, however--it merely wishes now to lower its price. There was no reason for the contracting officer to suspect a mistake in WEMS' bid; therefore, verification was not required, and WEMS cannot now change its bid. See BECO Corp., B-219651, Nov. 26, 1985, 85-2 CPD ¶ 601.

In an additional basis of protest that may also be the result of a FOIA request, WEMS alleges that because MICOM originally found Mil-Tronics to be nonresponsible due to its failure to obtain the necessary security clearances, it should have rejected the Mil-Tronics bid. Whether a bidder has the necessary security clearances constitutes a matter of bidder responsibility, since it concerns the bidder's apparent ability and capacity to perform all of the contract requirements. Information concerning matters of responsibility may be provided at any time before award. Carolina Waste Systems, Inc., B-215689.3, Jan. 7, 1985, 85-1 CPD ¶ 22. The Defense Investigative Service notified MICOM that, after bid opening, Mil-Tronics had obtained an interim security clearance. On the basis of this, the agency found Mil-Tronics to be responsible. We see nothing improper in this respect.

We affirm our prior decision.


for
Harry R. Van Cleve
General Counsel