



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cook Construction Company, Inc.--Reconsideration

File: B-226979.2

Date: May 4, 1987

DIGEST

Dismissal of an untimely protest is affirmed where the protester presents no credible evidence that it had any reason to ignore an alleged apparent solicitation impropriety, namely, the conduct on a negotiated basis of a procurement which the protester contends was required to be conducted on a sealed bid basis.

DECISION

Cook Construction Company, Inc. requests reconsideration of our dismissal of its protest concerning request for proposals (RFP) No. F22608-87-R0001, issued by the Department of the Air Force. We affirm our dismissal.

On April 1, 1987, Cook protested to our Office that the procurement (under which the closing date for receipt of initial proposals was January 7, 1987, best and final offers were requested on March 19, and award was made on March 26, 1987) was conducted on a negotiated basis while the Competition in Contracting Act of 1984 requires that sealed bid procedures be used. Since Cook's submission indicated that the RFP clearly stated that the procurement was being negotiated, we dismissed the protest against this alleged apparent solicitation impropriety as untimely because it was not filed before the closing date for the receipt of initial proposals, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986). Sylvan Service Corp., B-222482, July 22, 1986, 86-2 C.P.D. ¶ 89.

In its request for reconsideration, Cook argues that its April 1 protest was timely because the solicitation impropriety was not apparent prior to the due date for receipt of initial proposals because of the Air Force's conduct prior to and after that date. In particular, Cook

asserts that prior to the receipt of best and final offers, and award to Apac-Mississippi, Inc., on March 26, 1987, it appeared to Cook that the Air Force would award the contract to the "lowest responsible and responsive bidder as of the date of the bid opening." Cook asserts that it was only when it received notice of the award that it became apparent that the Air Force would not award on the basis of sealed bid procedures.

Cook points out that on January 7, 1987, it advised the Air Force that the contract should be awarded to the low bidder based on a review of the proposals received, and that the Air Force subsequently advised Cook that it was the low offeror, and requested Cook to provide financial information and to permit a plant inspection. Cook did both, and on February 18, the Air Force requested, and Cook granted, an extension of Cook's offer for 60 calendar days. Cook states that it understood that this extension was necessary to permit the Air Force to conduct final preparations for making the award. On March 19, allegedly without having conducted any discussions, the Air Force requested best and final offers, in response to which Cook affirmed its prior offer.

There is nothing in Cook's recitation of the facts to suggest that the Air Force ever indicated that it was conducting the procurement under other than negotiated procedures. The RFP stated that the procurement was being negotiated. The Air Force requested best and final offers which, by itself, constitutes appropriate discussions where a proposal contains no technical uncertainties. Mount Pleasant Hospital, B-222364, June 13, 1986, 86-1 C.P.D. ¶ 549.

While Cook has cited two federal Court of Appeals decisions to support its request for reconsideration, they are not applicable as the Courts do not have the same timeliness rules concerning the filing of complaints against the awards of federal contracts. The two prior decisions of our Office cited also do not require a reversal of our dismissal. The 1963 decision cited was considered before our Office had formalized its timeliness rules. In the other case cited, Nationwide Building Maintenance, Inc., 55 Comp. Gen. 693 (1976), 76-1 C.P.D. ¶ 71, we recognized the protest was untimely but considered it under the significant issue exception to our timeliness rules because of the number of janitorial contracts awarded by the General Reviews Administration and the number of protests which had been quoted. That exception is not applicable here.

Since the alleged solicitation defect was apparent from the RFP but Cook did not protest until after the award was made, we affirm our dismissal of the protest.

for Supreme Efron
Harry R. Van Cleve
General Counsel