



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: U.S. Systems--Request for Reconsideration
File: B-228245.2
Date: October 27, 1987

DIGEST

The General Accounting Office will not review a protest against an affirmative determination of responsibility absent a showing of possible fraud or bad faith by government contracting officials or that definitive responsibility criteria contained in a solicitation have not been met. E faith on the part of contracting officials is not shown by mere allegation that the agency accepted nonconforming supplies from the prospective awardee under prior contract

DECISION

U.S. Systems requests reconsideration of our September 23, 1987 dismissal of its protest, B-228245, over the award of contract for ball valves to Mogus Industries by the Department of Energy (DOE) under invitation for bids No. DE-FB21 87MC24187. The protest was dismissed because it was not filed in accordance with the time limitations specified in our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987). U.S. Systems requests that we consider its protest, despite its untimeliness, on the basis of the significant issue exception in our regulations at 4 C.F.R. § 21.2(c). The request for reconsideration is denied.

The basis for U.S. Systems' belief that the significant issue exception should be invoked is its assertion that Mogus has not delivered conforming supplies under prior contracts for the same item, and that DOE is "fully aware" that the valve delivered by Mogus does not meet the specifications. U.S. Systems complains that no fair and open competition exists where the agency knowingly accepts a product of lesser quality than required by the specifications. Thus the protester asserts that our Office should consider its protest because it raises an issue that is significant to the procurement community.

The significant issue exception is strictly construed and rarely granted. The exception is limited to untimely protests that raise issues of widespread interest to the procurement community which have not been considered on the merits in previous decisions of this Office. Alpha Parts & Supply, B-225401, Jan. 15, 1987, 87-1 CPD ¶ 62. For the reasons that follow, we are of the opinion that the protest does not meet the requirement for consideration under the significant issue exception because we have issued numerous decisions concerning the issue raised in the protest.

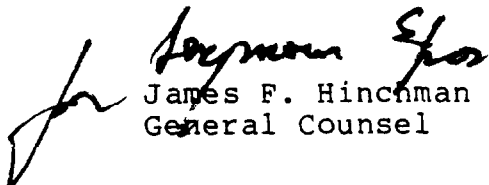
The primary issue raised here--the awardee's ability or willingness to perform according to the contract's specifications--is a matter of responsibility. "Responsibility" as used in federal procurement generally refers to a bidder's ability to perform all aspects of the contract requirements. Bohemia Inc.--Request for Reconsideration, B-226659.2, Apr. 28, 1987, 87-1 CPD ¶ 447. To be determined responsible, a prospective contractor must, among other things, have a satisfactory performance record and a satisfactory record of integrity and business ethics. Federal Acquisition Regulation, 48 C.F.R. § 9.104 (1986). These are matters that are generally left to the discretion of the contracting officer, and thus our Office does not review protests against affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith by government contracting officials or that definitive responsibility criteria have not been met. Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 CPD ¶ 383.

The protester's allegation of bad faith on the part of DOE is based on its mere assertion or belief that DOE is aware that the Mogus valve delivered under prior contracts does not meet the requirements of the specifications. The protester has presented nothing, however, to support its assertion that DOE in fact had such knowledge prior to determining that Mogus was responsible. A protester's mere belief, without more, is not sufficient to charge contracting officials with bad faith in the determination of responsibility of a prospective contractor. In other words, a showing of bad faith or fraud cannot be made by mere inference or supposition. See Gayston Corp.--Request for Reconsideration, B-223090.2, July 25, 1986, 86-2 CPD ¶ 115.

In the absence of any reasonable showing of possible fraud or bad faith, there is no basis for us to consider the issue raised to be "significant" as that term is used in

our regulations. See Pembroke Machine Co., Inc., B-227360,
June 11, 1987, 87-1 CPD ¶ 588.

The request for reconsideration is denied.

James F. Hinchman
General Counsel