



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Phoenix Printing Corp.--Request for
Reconsideration
File: B-229606.3
Date: June 1, 1988

DIGEST

Request for reconsideration of prior decision dismissing a protest against an agency's determination of nonresponsibility because prospective contractor did not have a security clearance at the time of award as required by the solicitation is denied where no new facts or legal arguments are presented which warrant reversal or modification of the original decision.

DECISION

Phoenix Printing Corp. requests that we reconsider our decision in Phoenix Printing Corp., B-229606.2, Mar. 30, 1988, 88-1 CPD ¶ 320, in which we dismissed its protest against the United States Government Printing Office's (GPO) determination that Phoenix was nonresponsible under a solicitation issued by GPO for Program No. 1273-S, a requirements contract for the Department of Energy (DOE). Phoenix was found nonresponsible because it did not have a current DOE security clearance at the time of the award. We dismissed the protest because the language of the solicitation explicitly required that the successful bidder obtain the security clearance prior to award. We deny the request for reconsideration.

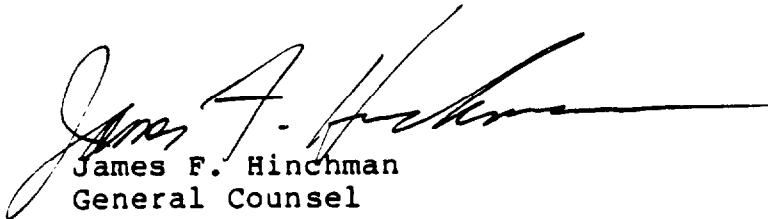
Phoenix now argues that, subsequent to our decision, the Public Information Director at Knolls Atomic Power Laboratory (the requiring activity) informed it that Knolls does not require DOE security clearance at the time of award. Phoenix also claims to have been told that, generally, sufficient time is allotted for successful bidders to receive such clearance. Phoenix also states that interim clearance is generally granted to a contractor when there is insufficient time to secure clearance.

042348

DOE, however, has informally advised us that a security clearance is in fact required for performance because much of the printing involves classified requirements relating to atomic power. Moreover, DOE has stated that an interim clearance is very rarely issued in these circumstances. DOE does agree, however, that GPO should allow several months for a proposed awardee to obtain a security clearance if it does not already hold one.

Phoenix has presented no new facts or legal arguments which would warrant modifying our original decision. 4 C.F.R. § 21.12 (1988). Phoenix was clearly on notice that a clearance was required at the time of award, and that there might not be sufficient time available to obtain such a clearance between the time of bid opening and the time award was necessary. Phoenix did not file a protest prior to opening on the basis that there was insufficient time to obtain the clearance. Since Phoenix did not protest that issue until it was found to be nonresponsible, that basis for protest is not timely. 4 C.F.R. § 21.2(a)(1) (1988).

Nonetheless, we are concerned that GPO is effectively restricting competition to firms that hold a current DOE security clearance by not allowing sufficient time between bid opening and contract award to obtain a clearance where necessary. We are advising the Public Printer of our concerns by separate letter of today.



James F. Hinchman
General Counsel