



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: MEI Environmental Services--Reconsideration
File: B-231401.2, B-231401.3
Date: June 16, 1988

DIGEST

1. Request for reconsideration of dismissal is denied where protester shows no errors in General Accounting Office's conclusion that original protest that stated no protest grounds was properly dismissed.
2. Protest that solicitation was unduly restrictive and should have been set aside for small business concerns is untimely where the protest was filed after bid opening.
3. Allegation that procurement estimate is faulty because of receipt of considerably lower bid does not provide a valid basis for protest since such a bid, which may represent a buy-in, does not itself establish the invalidity of the estimate.

DECISION

MEI Environmental Services requests that we reconsider the dismissal of its mailgram protest for failure to state a ground of protest and protests the specifications in invitation for bids (IFB) No. DABT58-88-B-0012, issued by the Army for sewer pipe rehabilitation at Fort Monroe, Virginia. MEI contends that only Insituform, a patented franchised product, meets the specifications and that only one company, Insituform East, Inc., is licensed to provide the product in the Fort Monroe area. MEI also appears to question the Army's decision not to set aside the procurement for small businesses and believes that Insituform East's bid may be a buy-in.

We deny the request for reconsideration and dismiss the protest.

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The IFB was issued April 4, 1988, with a May 4 bid opening. Insituform East was the only bidder. MEI initially sent a mailgram, received by our Office on May 11, which stated that MEI protested the award under the solicitation and would furnish our Office with the grounds for its protest within 10 days. We dismissed the protest on May 11 pursuant to our Bid Protest Regulations for failure to state a basis for protest. 4 C.F.R. § 21.1(f) (1988). On May 16, our Office received a letter from MEI setting forth the grounds for its protest and, on May 17 we received another letter from the protester requesting that we reconsider our earlier dismissal.

Our regulations provide that protest submissions must clearly state legally sufficient grounds of protest. 4 C.F.R. § 21.1(e). MEI's mailgram which merely announced that MEI was protesting but stated no grounds did not constitute a sufficient protest and was properly dismissed. 4 C.F.R. § 21.1(f). MEI now explains that it misunderstood our rules in this regard, but otherwise offers no basis for us to reconsider the dismissal. Accordingly, we deny the reconsideration request.

MEI's letter filed on May 16 did contain protest grounds and therefore can be considered as a protest. That protest, however, is untimely or otherwise does not raise a valid basis of protest.

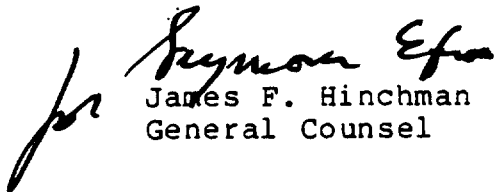
First, MEI contends that the specifications are restrictive. Our regulations provide that a protest based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed before that time. 4 C.F.R. § 21.2(a)(1); Diogenes Corp., B-229828, Jan. 13, 1988, 88-1 CPD ¶ 31. Since there is no evidence that a written protest was filed either with our Office or the agency prior to bid opening, this argument is untimely raised.

MEI also appears to contend that the Army should have conducted the procurement as a small business set-aside, apparently because of its small dollar amount. Generally, protests of a set-aside or a failure to set aside are considered protests of alleged defects which are apparent from the face of the solicitation. XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75. This argument is therefore also untimely since it was not filed before bid opening. 4 C.F.R. § 21.2(a)(1).

Finally, MEI questions the disparity between the government's estimate for the work and Insituform's bid. MEI thinks there is an error in either the Army's estimate or the bid price and believes that any savings apparent in Insituform's bid is misleading. To the extent the protester

is arguing that Insituform's bid of less than \$40,000 constitutes a buy-in, there is no legal basis on which to object to the submission or acceptance of a below cost bid. Applied Controls Co., Inc.--Request for Reconsideration, B-228568.2, Nov. 30, 1987, 87-2 CPD ¶ 528. To the extent MEI is arguing that the government's cost estimate of \$60,000 is faulty, the protester merely speculates that since the Insituform bid was significantly lower than the estimate that estimate must be flawed. The acceptance of a bid which is considerably lower than the government estimate, however, does not itself show that the estimate was unreasonable. Since the protester makes no other argument, we have no basis upon which to consider the matter.

The reconsideration request is denied and the protest is dismissed.

for
James F. Hinchman
General Counsel