



The Comptroller General

of the United States

Washington, D.C. 20548

Decision

Matter of: American Energy Products Corporation--

Request for Reconsideration

File: B-232611.2

Date: October 21, 1988

DIGEST

1. A second-tier subcontractor to a prime contractor to the government, which is not itself an actual bidder or offeror, is not considered an interested party to protest under the Competition in Contracting Act of 1984 and the General Accounting Office's Bid Protest Regulations.

2. The propriety of the rejection by the government, during the course of contract performance, of materials supplied by the protester to the general contractor, involves a matter of contract administration and as such is not for consideration under the General Accounting Office's Bid Protest Regulations.

DECISION

American Energy Products Corporation requests reconsideration of our notice of September 21, 1988, dismissing its protest. We affirm the dismissal.

American's protest concerned General Services Administration (GSA) contract, No. G5-04P-87-EX-C0075, for asbestos abatement and miscellaneous alterations on a federal building in Miami, Florida. American manufactures and supplies a sprayed-on, mineral fiber fire-proofing material which is applied to the structural members of buildings. American's correspondence indicates it sold its product to a firm who applied it to the building under a subcontract with the general contractor. During the performance of the contract, however, the government instructed the general contractor not to continue applying the material American supplied because it was friable and thus a potential carcinogen.

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We dismissed American's protest of the rejection of its material since it was a subcontractor and not an actual or prospective bidder who had a direct economic interest in the procurement.

In its request for reconsideration American reiterates its arguments, the substance which concern the economic impact of its being removed from its position as supplier. In its correspondence, American describes what it perceives as a widespread reluctance among federal and local government activities to permit the use of the type of fire-proofing material it manufactures even though, it states, that material is an acceptable alternative under a 1984 General Services Administration guide specification. The protester argues that contrary to the language of our dismissal notice, it does have a "direct economic interest" in the exclusion of the product it manufactures.

The protester's correspondence suggests that it is not aware of certain limits on our bid protest jurisdiction. With regard to the Miami project, which was the subject of American's protest, there were two reasons why its complaint about the rejection of its material was not appropriate for our consideration, even though we relied on only one of them in dismissing the protest.

First, as we indicated in our dismissal notice, under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 et seq. (Supp. IV 1986) and our implementing Bid Protest Regulations, 4 C.F.R. Part 21 (1988), our jurisdiction is limited to the consideration of protests filed by an "interested party," which is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or failure to award the contract. A subcontractor to a potential or actual government contractor, which is not an actual bidder or offeror itself, is not an interested party. Mid-South Dredging Company--Request for Reconsideration, B-228677.2, Aug. 20, 1987, 87-2 CPD ¶ 191.

Second, since the rejection of American's material occurred during the course of performance of the contract, the propriety of that rejection involves a matter of contract

administration, and as such is not for consideration under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1).

For the above reasons, our dismissal is affirmed.

for Jerome Stros
James F. Hinchman
General Counsel