



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Fuel Cell and Coated Fabrics Company--
Request for Reconsideration
File: B-234395.2
Date: March 21, 1989

DIGEST

Prior decision dismissing protest is affirmed where request for reconsideration does not establish any factual or legal errors in the prior decision.

DECISION

American Fuel Cell and Coated Fabrics Company requests reconsideration of our decision in American Fuel Cell and Coated Fabrics Co., B-234395, Feb. 21, 1989, 89-1 CPD ¶ ____, in which we dismissed its protest of the United States Army Troop Support Command's delay in making award under invitation for bids (IFB) No. DAAK01-88-B-B034, issued for fabric, collapsible, drinking water, 500 gallon drums. American alleged it was the lowest responsive bidder at the June 30, 1988, bid opening and that the Army has failed to award a contract even though more than 8 months have elapsed. We dismissed the protest, stating that a delay in meeting procurement milestones is a procedural deficiency which does not alone provide a basis of protest, because it has no effect on the validity of a procurement.

We affirm our prior decision.

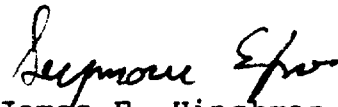
In its request for reconsideration, American objects that the three cases cited in our decision dealt with requests for proposals, in which negotiations were required, and not with an IFB, as here, with a public disclosure of all bids on the bid opening date. American repeats its assertion that if the solicitation were reissued now it would probably result in lower bids, and contends that the delay per se in awarding a contract precludes any award under the IFB.

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The cases cited in our prior decision stood for the proposition that an allegation of delay in awarding a contract does not alone provide a valid basis of protest. The fact that the solicitation here is an IFB does not change that outcome. There is no requirement for the government to make an award within a bidder's initial bid acceptance period. Systematics General Corp., B-224991, Feb. 20, 1987, 87-1 CPD ¶ 190. It is generally within the contracting agency's discretion to request an extension in order to avoid the need for recompetition where administrative difficulties delay an award. Federal Acquisition Regulation § 14.404-1; Boyd-Ferm, Inc., B-218081, Feb. 21, 1985, 85-1 CPD ¶ 222. Bidders are, of course, free to refuse such a request and to withdraw their bids. MEMM General, Inc., B-210939, May 31, 1983, 83-1 CPD ¶ 579. Here, American presumably has agreed to extend its bid acceptance period, if expired. We have been advised by the agency that the delay in making an award has been caused by considering the responsibility of various bidders.

The possibility of obtaining a lower price from American or other bidders clearly would not justify reprourement. To do so would be tantamount to the conduct of an auction, in which a bidder, knowing the original prices of others, would have an opportunity to bid again for the identical items. See Systematics General Corp., B-224991, supra, 87-1 CPD ¶ 190 at 3.

Since American has not demonstrated that our prior decision is legally or factually incorrect, the decision is affirmed. 4 C.F.R. § 21.12 (1988).

for 
James F. Hinchman
General Counsel