



Comptroller General
of the United States

Washington, D.C. 20548

Cunningham

Decision

Matter of: Soltec Corporation--Reconsideration

File: B-234597.3

Date: August 21, 1989

DIGEST

1. Request for reconsideration of prior decision is untimely where request, which basically restates prior protest, is filed more than 1 month after protester's receipt of decision.
2. Grounds of new protest are untimely filed where:
 - (1) use of negotiated, instead of sealed bid, format was not protested prior to closing date for receipt of proposals,
 - (2) contracting agency's failure to extend closing date and refusal to send certain employees to visit contract site or meet with protester, as protester requested, were not protested within 10 working days from closing date for receipt of proposals, by which time protester should have known that it had bases of protest stemming from contracting agency's inaction on requests, and
 - (3) allegation that awardee had taken advantage of its competitive position to offer an unreasonably high price was not filed within 10 working days from when protester first was informed of the award and the contract price.

DECISION

Soltec Corporation requests reconsideration of our decision of June 14, 1989,^{1/} in which we denied the company's protest against a specification requiring "sprocket drive operation" for a requirement of "Thermal Writing Strip-Chart Recorders," Western Graphtec model No. WR350Z-8 "or equal," described by the Naval Weapons Center under request for proposals (RFP) No. N60530-89-R-0147. The recorders are to be used at the aircraft and missile test range facility,

^{1/} Soltec Corp.; Astro-Med, Inc., B-234597; B-234597.2,
June 16, 1989, 89-1 CPD ¶ 568.

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China Lake, California. Soltec also protests the award of a contract on July 18, 1989, to Western Graphtec.^{2/}

We dismiss the request for reconsideration as untimely filed under section 21.12(b) of our Bid Protest Regulations (4 C.F.R. Part 21 (1988)). We also dismiss the new protest because it is clear from the face of the protest that it is untimely.

REQUEST FOR RECONSIDERATION

In its protest giving rise to our June 16 decision, Soltec contended that the specification requirement that the recorder paper be sprocket driven improperly restricted the competition for the RFP only to Western Graphtec, which uses sprocket drive rather than the "friction drive" used in Soltec's recorder. The Navy maintained that it properly specified recorders using sprocket drive because of the severe desert environment found at the China Lake test range (the northwest corner of the Mojave Desert where extreme temperature variations are present along with dust and grit) which, in the Navy's view, requires sprocket drive recorders in order to assure consistent, uniform paper recording of test results. Specifically, the Navy stated that the recorders will be housed mainly in portable trailers which are not permanently air-conditioned, and the recorders are not, therefore, protected from the desert environment. Based on our review of the record, we concluded that the protester had not shown the Navy's specification requiring sprocket drive recorders to be clearly unreasonable.

By letter dated July 26, 1989, received at our Office on August 2, Soltec requested reconsideration based generally on its previous assertions that the specification for sprocket drive was improper and that its friction drive recorder will perform at China Lake equal to, or better than, Western Graphtec's sprocket drive recorder. Additionally, Soltec continued to question whether the recorders actually are used in as harsh an environment as the Navy claims. In this regard, Soltec asserted that it could not

^{2/} The Navy postponed the receipt of proposals until after we had resolved Soltec's protest of the RFP's specifications. Western Graphtec, the highest-priced of the three offerors, was the only technically acceptable one.

find or locate any trailers at China Lake "that do not have air-conditioning systems."^{3/}

Section 21.12(b) of our Bid Protest Regulations provides that a request for reconsideration of a decision of our Office shall be filed not later than 10 working days after the basis for reconsideration is known or should have been known, whichever is earlier. Although Soltec does not state when it received our June 14 decision, we estimate that it takes no more than 1 calendar week for a protester to receive a decision through the mail. Engineering Consultants & Publications--Reconsideration, B-225982.5, June 16, 1987, 87-1 CPD 598. On that basis, Soltec presumably received our decision by June 21. Its request for reconsideration, which basically restates its prior protest, was filed more than 1 month later and therefore is clearly untimely.

NEW PROTEST

In its correspondence filed with us on August 2, Soltec also protested the Navy's July 18 award to Western Graphtec. Soltec contends that: (1) the requirement should have been contracted for under sealed bid, rather than negotiated, procedures; (2) the Navy improperly refused to extend the July 11 closing date for the RFP notwithstanding Soltec's timely June 30 request that it do so; (3) the Navy refused Soltec's request to have appropriate Navy employees visit the China Lake test range facility to determine the legitimate needs of the test range for this requirement; and (4) the Navy's representatives refused to meet with Soltec in late June 1989 to discuss the RFP. Additionally, by letter filed with us on August 9, Soltec alleged that the award had been made at an unreasonably high price because, as a result of our not disturbing the specification

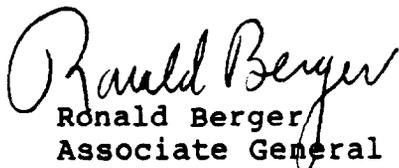
^{3/} We note that the fact that a trailer is equipped with an air-conditioning system does not necessarily mean that the system is in operation around the clock. Indeed, we have been informally advised by the Navy that the trailer air-conditioning is dependent on portable generators which have limited fuel supplies. Consequently, the trailers' air-conditioning can, of necessity, be only operated, due to the consequent fuel-limited generating capacity, while the tests are actually being run by Navy employees. Therefore, the recorders, housed within the portable trailers, are necessarily exposed to the severe desert environment while being hauled, typically on short notice, to various parts of the desert as well as exposed during storage times between tests, which may be up to a week's duration.

requirement for sprocket drive, the eventual awardee knew it was in a "sole-source" position.

All of these allegations are untimely. The first allegation is untimely under section 21.2(a)(1) of our Bid Protest Regulations, since this ground relates to an apparent solicitation defect which was not raised before the time for receipt of initial proposals. The next three grounds for protest are untimely because they were not filed with our Office until August 2, or more than 10 working days after July 11, the closing date for receipt of proposals, as of when Soltec should have known that the Navy would not postpone the closing date and that the Navy would not take the other actions which Soltec had requested. Consequently, these grounds of protest are untimely filed under section 21.2(a)(2) of our Regulations, which requires that protests concerning other than solicitation defects be filed within 10 working days from the date the basis of protest is known or should have been known, whichever is earlier.

Similarly, Soltec's final basis for protest--that the award was made at an uncompetitive, unreasonably high price--is untimely because it was not raised within 10 working days from when the basis for protest was known or should have been known. The record shows that in a telephone conversation of July 18, 1989, the Navy informed Soltec of the award to Western Graphtec and the contract price. It was by letter filed with our Office on August 9, however, that Soltec first specifically alleged that taking advantage of its position, Western Graphtec had offered--and the Navy had accepted--a price which was unreasonably high. Since this basis for protest was not raised within 10 days of when Soltec was informed of the price at which the contract was awarded it is untimely and therefore dismissed.

We dismiss the request for reconsideration and the new protest.


Ronald Berger
Associate General Counsel