19920 Mr. Ruppert

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-199013.2 DATE: October 29, 1981

MATTER OF: McQuiston Associates--Reconsideration

DIGEST:

1. Question of whether contract should be terminated for default and whether defaulted contractor should be held liable for excess reprocurement cost is a matter within the jurisdiction of the Armed Services Board of Contract Appeals under the disputes clause of the contract and is not for consideration by GAO.

2. Dismissal of protest against award as untimely is affirmed since protester knew of award on May 1, 1980, and believed that it was improper but did not protest until May 19, 1980, which was more than 10 working days later.

McQuiston Associates (McQuiston) requests that we reconsider our decision in McQuiston Associates, B-199013, September 1, 1981, 81-2 CPD 192.

Our decision denied McQuiston's protest against the United States Army Missile Command's failure to invite it to bid under invitation for bids (IFB) DAAH01-80-B-0556 for the reprocurement of the terminated portion of McQuiston's contract. The basis for the denial was that competition and a reasonable price were obtained on the reprocurement and it did not appear that the contracting officer intended to exclude McQuiston from bidding on the reprocurement. Our decision also dismissed McQuiston's protest against the award of order 145 on the basis that the protest was untimely.

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McQuiston requests reconsideration of the decision on the basis that the contracting officer intentionally withheld IFB DAAH01-80-B-0556 from McQuiston and that the protest against the award of order 145 was timely.

McQuiston's request is dismissed.

McQuiston has indicated that its purpose in establishing that the contracting officer intentionally withheld the IFB from McQuiston is to be relieved of excess costs on the terminated contract for which IFB DAAH01-80-B-0556 is the reprocurement. McQuiston has indicated that the matter is before the Armed Services Board of Contract Appeals (ASBCA) and has furnished testimony by the contracting officer which McQuiston believes establishes that the contracting officer intended to exclude McQuiston from bidding on the reprocurement.

The question of whether a contract should be terminated for default and whether the defaulted contractor should be held liable for the excess cost of reprocurement is a matter within the jurisdiction of the ASBCA under the disputes clause of the contract and is not for consideration by our Office. Rogow & Bernstein, B-197269, June 11, 1980, 80-1 CPD 406; Braceland Brothers, Inc., B-193916, February 16, 1979, 79-1 CPD 120. Since McQuiston intends the matter of whether the contracting officer intentionally excluded McQuiston from participating in the reprocurement to have a bearing upon whether McQuiston should be held liable for excess costs, McQuiston will be left to its remedy before the ASBCA.

McQuiston contends that its protest against the award of order 145 was timely in that it did not know the basis of protest until the agency report on the protest was received. However, McQuiston's basis of protest after receipt of the agency report was no different than it was prior to the receipt of the report. The basis of protest before and after receipt of the report was that the award of order 145 was improper since McQuiston previously had offered to perform at a lower price. As indicated in our decision of

September 1, 1981, McQuiston knew of the award on May 1, 1980, and believed that it was improper, but did not protest until its letter of May 19, 1980, which was more than 10 working days later. Under our Bid Protest Procedures, the protest was required to be filed within 10 working days after the basis of the protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1981). Therefore, we find no error of fact or law in our prior dismissal of the protest against the award of order 145. Accordingly, the dismissal is affirmed.

for Milton J. Socolar
Comptroller General
of the United States