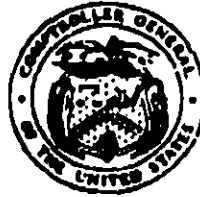


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DECISION



*B. W. Oliver
Proc II*

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

FILE: B-18/818

DATE: December 10, 1976

MATTER OF: American Safety Flight Systems, Inc.

DIGEST:

1. Protest to GAO is untimely where initial protest to contracting agency was not filed within 10 working days after protester became aware of basis for protest.
2. Agency's failure to invite sole-source offeror to attend meeting held in connection with protest filed with contracting agency by another firm is not contrary to applicable regulations. Record shows that, in accordance with regulations, offeror was apprised of protest and could have expressed its views to contracting officer.

By letter dated November 10, 1976, American Safety Flight Systems, Inc. (ASFS), protests the cancellation of request for proposals (RFP) DAAJ01-76-R-0471 (PIG), issued by the Army Aviation Systems Command (AVSCOM), to ASFS on a sole-source basis for 903 free fall oxygen systems. The RFP was cancelled as a result of information obtained by the contracting officer at an August 31, 1976 meeting attended by representatives of AVSCOM, the U.S. Army Natick Research and Development Command and Fluid Power, Inc. (a firm which had protested the proposed sole-source award of the contract to ASFS), which indicated there was insufficient justification for a sole-source procurement.

ASFS asserts that the cancellation is not in the best interests of the Government and is prejudicial to ASFS because of the price negotiations conducted under the cancelled RFP. ASFS also questions AVSCOM's failure to invite its representatives to attend the August 31 meeting to afford it the opportunity to present its position.

The documents furnished by ASFS with its protest indicate that by telegram dated September 3, 1976, and received September 7, 1976, ASFS was notified of the cancellation. On September 8, 1976, a representative of ASFS met with the contracting officer to discuss the reasons for the cancellation. This was followed by a letter dated September 17, 1976, expressing ASFS' disagreement with the determination to cancel the RFP and requesting that if AVSCOM

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should decide not to reconsider the action, it should forward ASFS all the available information necessary for it to protest the cancellation. Following its receipt of the requested information on September 28, ASFS, by letter dated October 6, formally protested the cancellation to AVSCOM. By letter dated November 2, the contracting officer affirmed his decision to cancel the RFP. ASFS's protest to this Office (by letter dated November 10, 1976) was filed (received) with this Office on November 15, 1976.

Standards applicable to the timeliness of protests are provided in section 20.2 of this Office's Bid Protest Procedures, 4 C.F.R. part 20 (1976). In pertinent part, they provide as follows:

"(a) * * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section * * *."
(Emphasis added.)

Section 20.2(b) states that protests based on other than an alleged impropriety in the solicitation must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier.


In this case, it appears that ASFS first became aware of its basis for protest at the September 8, 1976, meeting with the contracting officer. Since ASFS's initial protest to AVSCOM was not filed until AVSCOM's receipt of ASFS's letter of October 6, 1976, the initial protest was untimely. Therefore, the subsequent protest to our Office will not be considered on its merits.

Concerning AVSCOM's failure to invite ASFS to the August 31 meeting, we are not aware of any regulation requiring that ASFS be afforded an opportunity to attend such a meeting. Armed Services Procurement Regulation 2-407.8 (1975 ed.) provides that when a protest is filed, others "involved in or affected by the protest shall be given notice of the protest." ASFS concedes it had been apprized of the pending protest. Therefore, it could

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have expressed its views on the matter to the contracting officer during that official's consideration of the protest filed by Fluid Power, Inc.

The protest is dismissed.


Paul G. Dembling
General Counsel