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Richard Kloman

Proc. II

DECISION



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

FILE: B-187533

DATE: December 22, 1976

MATTER OF: Vogue Instrument Corporation

DIGEST:

1. Protest against alleged impropriety in RFP filed after closing date for receipt of initial proposals is untimely under GAO Bid Protest Procedures.
2. Protest not filed within 10 days after the basis for the protest is known or should have been known, whichever is earlier, is untimely under GAO Bid Protest Procedures.

On July 7, 1976, the Air Force issued request for proposal (RFP) No. F04606-76-R-0910 for the procurement of variable resistor assemblies. The RFP set a closing date for receipt of proposals for July 30, 1976.

Vogue Instrument Corporation (Vogue) and the General Electric Supply Company (GE) submitted proposals. On August 25, 1976, the Air Force awarded the contract to GE, the low offeror.

On September 3, 1976, Vogue lodged an oral protest against the award to GE with the Air Force. Vogue confirmed its oral protest by letter dated September 7, 1976. On September 16, 1976, an Air Force representative notified Vogue by phone that its protest had been denied. The record reflects that on the same date a letter was mailed to Vogue, which was received by it on September 20, 1976, confirming the denial. Vogue subsequently filed its protest with our Office.

The Air Force has asserted that: " * * * Vogue's protest is untimely filed under the General Accounting Office's Bid Protest Procedures, and should not be considered." For the reasons that follow, we must agree.

GAO's Bid Protest Procedures, 4 C.F.R. § 20.2 et seq., provide in pertinent part as follows:

* * * * *

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation.

"(2) In cases other than those covered in subparagraph (1) bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

"(3) The term 'filed' as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be."

Vogue's protest was received in our Office on September 29, 1976. The basis of Vogue's protest is that the RFP specified Vogue as the only approved source for the variable resistors at issue here, and consequently the contract was improperly awarded to GE. Vogue's protest filed here also included the allegation that discussions between the Air Force and GE contravened section 3-80.5 of the Armed Services Procurement Regulation because the discussions resulted in a competitive advantage to GE.

The fact that the Air Force considered GE to be an approved source for the procurement of the variable resistors should have been known to Vogue after it reviewed the RFP, dated July 7, 1976. The RFP stipulated that both GE and Vogue are "APPROVED SOURCES."

Vogue did not object to the award to GE, and impliedly to the Air Force's determination that GE was an approved source, until it lodged its oral protest with the Air Force on September 3, 1976,

B-187. .J

or 5 weeks after the closing date for receipt of initial proposals. Consequently, we conclude that Vogue's protest here is untimely under 4 C.F.R. § 20.2(b)(1), quoted above.

With regard to the discussions between the Air Force and GE, Vogue did not protest the alleged impropriety of these discussions, which Vogue learned about on June 16, 1976, until it filed its bid protest with our Office on September 29, 1976, which was more than 2 months after the basis for its protest was known or should have been known. Consequently, we must conclude that Vogue's protest on this issue is also untimely. See 4 C.F.R. § 20.2(b)(2), quoted above.

Consequently, Vogue's protest will not be considered on its merits.

for *Melton Fowler*

Paul G. Dambing
General Counsel