

DECISION



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

10,551

FILE: B-193849

DATE: June 22, 1979

DLG 01388

MATTER OF: Security Assistance Forces and Equipment OHG

DIGEST:

- 1. Protest<sup>file</sup> alleging that agency improperly rejected protester's offer as being unreasonably high without first being requested to provide cost break-down. is untimely where filed more than 10 working days after protester knew or should have known offer was rejected as being unreasonably high.
- 2. <sup>file</sup> Prior decision dismissing protest as untimely <sup>is</sup> affirmed where protester <sup>has</sup> did not show that prior decision was based on errors of fact or law.

Security Assistance Forces and Equipment OHG (SAFE) requests reconsideration of our decision Security Assistance Forces and Equipment OHG, B-193849, May 15, 1979, 79-1 CPD     . Our decision dismissed SAFE's protest of the rejection of its offer under request for proposals (RFP) No. DAJA76-78-R-0425 <sup>ACC 00315</sup> issued by the Frankfurt Area Procurement Office (FAPO) of the United States Army Procurement Agency, Europe, as untimely because it was filed more than 10 working days after SAFE knew or should have known of the bases of its protest.

The essential facts are as follows:

On July 21, 1978, FAPO issued a RFP for the correction of fire protection deficiencies at Wiesbaden-Hainerberg. The RFP provided for a closing date of August 11, 1978, for receipt of offers. SAFE submitted the only offer in the amount of \$92,840.50, while the Government estimate was \$40,818.75 or 81,637.50 Deutsche Marks (DM).

On August 22, 1978, SAFE was advised by a FAPO contract specialist that since the RFP indicated that offers were to be made in DM, SAFE's offer was

[ALLEGATION THAT Bid Rejection WAS IMPROPER]

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"nonresponsive." SAFE took exception to this view and stated that any further discussions under the RFP would have to be in writing, or tape-recorded. Thereafter, SAFE requested written confirmation of the contract specialist's advice and was advised by the contracting officer that offers made in dollars were in fact acceptable.

Subsequently, by a form letter dated September 15, 1978, SAFE was advised by the contracting officer that a contract would not be awarded under the RFP because "the services [we]re not required at the present time." SAFE responded by a letter dated September 22, 1978, that it had determined that the project was in fact still necessary and on the same date filed a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 152 (1976), for documents relating to the procurement.

By a letter dated October 16, 1978, the contracting officer advised SAFE that its FOIA request was being processed. The letter also stated that the RFP was canceled because, based on the Government's estimate, SAFE's offer was considered unreasonable in price. Thereafter, FAPO sent interim replies to SAFE's FOIA request dated October 17, 1978, and November 7, 1978, in which the unreasonableness of SAFE's offer was also noted. Subsequently, on December 28, 1978, SAFE received a copy of an August 22, 1978, memorandum prepared by the contracting officer which stated in part:

"\* \* \* the Contracting Officer determined the offer to be excessive in price and therefore considered to be nonresponsive since the contractor refused to furnish any additional information for evaluation purposes."

On January 2, 1979, SAFE filed its protest with our Office against the rejection of its offer and the cancellation of the RFP. SAFE alleged that its price was not unreasonable, and that, in any event, in view of the difference between the price and the Government estimate, the contracting officer "should have requested a written verification of [its] proposal and/or a breakdown of costs."

SAFE argued that the bases for its protest were not known until December 28, 1978, when it received FAPO's response to its FOIA request to the effect that it had "refused to furnish additional information for evaluation purposes." However, we dismissed SAFE's protest as untimely because the bases for protest (whether SAFE's offer was unreasonable in price and whether its offer should have been rejected without discussion) were or should have been known upon receipt of the above mentioned letters of October 16, 1978, October 17, 1978, and November 7, 1978, and SAFE did not file its protest until January 2, 1979. We also held that to the extent that SAFE's protest involved a dispute as to whether SAFE refused to furnish additional information as argued by the Army, or, as SAFE alleged, was never asked to do so, that the matter was academic in view of SAFE's untimely protest.

In its request for reconsideration SAFE states that we did not address the matter it protested. Specifically, SAFE asserts that it did not protest the cancellation of the RFP but rather the rejection of its offer on the basis that it refused to furnish additional information. SAFE further asserts that its protest was filed in a timely fashion upon being notified of this basis by FAPO's December 28, 1978, reply to its FOIA request.

We do not agree that our prior decision failed to address the matter which SAFE was protesting. SAFE's protest as filed with our Office protested the rejection of its offer under the RFP. Inasmuch as SAFE's was the only offer received, it is implicit in SAFE's protest that it was also protesting the cancellation of the RFP which followed the rejection of its offer. Additionally, SAFE's argument that it did not know of the basis of its protest until it received the final reply to its FOIA request on December 28, 1978, is without merit. SAFE's protest is essentially that its offer should not have been rejected without its being requested to confirm its offer or to give a cost break-down. Assuming arguendo that SAFE was not requested to confirm its offer or to give

a cost break-down, it is obvious that SAFE knew of the basis of its protest when it received the letters from FAPO indicating that its offer was rejected for being unreasonably priced.

In short, SAFE has provided no factual or legal grounds that were not previously considered and SAFE has provided no basis upon which reversal or modification of the prior decision is deemed warranted. Our prior decision is affirmed.



Acting Comptroller General  
of the United States