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DECISION



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

FILE: B-204418

DATE: February 16, 1982

MATTER OF: Monaco Enterprises, Inc.

DIGEST:

If protester's pre-closing-date conversation with a representative of procuring agency was intended to be a protest of an alleged solicitation defect, the subsequent protest to our Office concerning the same defect was untimely since it was filed more than 10 working days after notice of the initial adverse agency action on the protest. See 4 C.F.R. § 21.2(a) (1981). If the conversation was not intended to be a protest, the protest filed with our Office after the date for receipt of initial proposals is untimely because the defect should have been protested prior to that date. See 4 C.F.R. § 21.2(b)(1) (1981).

Monaco Enterprises, Inc. (Monaco), protests the proposed award of any contract under request for proposals (RFP) No. USSS 81-R-41 issued by the United States Secret Service on July 1, 1981, for furnishing and installing a Halon Fire Suppression System. Monaco contends that at the time the RFP was issued, the requirement should have been ordered instead from the Federal Supply Schedule (FSS). The protest is untimely and, therefore, is dismissed.

Monaco requested the plans, specifications and bid forms in response to the advertisement in the Commerce Business Daily. While making a site visit in Washington, D.C., on July 29, 1981, a sales representative for Monaco informed the Procurement Branch that the "Halon equipment was on the FSS." The contracting officer states he then told the representative that:

"Since the RFP called for the vendor to propose a system and to furnish engineering services * * * the system * * * could not be purchased by a delivery order against the FSS as the FSS was only for equipment, and the required engineering services were open market items."

Monaco denies that its representative was advised as stated by the contracting officer. However, Monaco admits that it was told by the agency that "they were going out for bid anyway."

Monaco then submitted a proposal which was withdrawn shortly before the closing time for receipt of initial proposals set at 3 p.m., August 7, 1981. Some time after proposals were opened, Monaco phoned the contracting officer and protested award of a contract under the RFP for the reason that the equipment was, allegedly, a mandatory purchase item under the FSS. Monaco then filed a protest with our Office which was received on August 18, 1981.

Section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1981)) requires that a protest based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to that date. If the July 29 conversation was intended to be a protest, the statement of the contracting officer that "they were going out for bid anyway" constituted the initial adverse agency action on the protest. Section 21.2(a) of Our Bid Protest Procedures also requires that if a protest has been initially filed with the contracting agency, any subsequent protest to our Office must be received in our Office within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action; however, the protest was not received by our Office within 10 days of the initial adverse agency action on July 29, 1981. Therefore, the protest to our Office is untimely filed. If the conversation was not intended to be a protest, the August 18 protest is still untimely because it relates to an alleged solicitation defect--that is, the solicitation's failure to restrict competition to FSS contractors--which should have been protested prior to the receipt of initial proposals.

In any event, we note that in September 1981, the General Services Administration canceled "all current contracts for the Halon Fire Suppression Systems"; apparently, therefore, there are no current FSS contracts which contain the Halon system being purchased.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel