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DECISION



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

20872

FILE: B-203605

DATE: February 22, 1982

MATTER OF: Control Magnetics Corporation

DIGEST:

1. Protest against extension of date for bid opening is untimely and will not be considered on the merits when filed more than 10 days after protester learned of reason for the extension which provided the basis for protest.
2. Allegation that telegraphic bid should have been accepted is untimely where filed more than ten working days after the Government informed protester that the bid had been rejected.

Control Magnetics Corporation protests actions taken by the Department of the Air Force under invitation for bids F04606-81-B-0101. The IFB is for motor stators for the F-111 aircraft. Control contends that the Air Force erred by extending the initial date scheduled for bid opening and by refusing to accept either of two bids that Control submitted. The Air Force eventually canceled the solicitation. Because these contentions were untimely filed, we dismiss the protest.

The IFB specified the bid opening date as May 12, 1981 at 10:00 a.m. Control Magnetics submitted a bid on May 12 at 9:45 a.m. A contracting official, however, mistakenly believed that no bids had been received and, to save the expense of a complete resolicitation, amended the IFB to extend bid opening to 10:00 a.m. on May 22. The amendment had an effective date of May 12 and was distributed on May 13.

On May 15, according to the Air Force, or May 18, according to the protester, Control was informed that the Air Force had extended bid opening because it had not received any bids by the initial opening date. Control responded that it submitted a bid prior to the time scheduled for opening. Upon investigation, the

Air Force determined that Control had in fact submitted a timely bid. The Air Force did not open the bid at that time, however, because of the bid opening extension to May 22.

Control alleges that it believed the bid had been opened and that other firms might be able to bid with knowledge of its bid price. It formally withdrew the bid on May 18. The bid was subsequently returned to Control unopened. On May 22, Control submitted a telegraphic bid. There is disagreement between the Air Force and the protester concerning the timeliness of the telegraphic bid. In any event, the solicitation did not authorize telegraphic bids. The Air Force rejected the bid.

Control contends that the issuance of the amendment was improper and that, therefore, its withdrawn bid should be accepted. This contention was untimely filed. Our Bid Protest Procedures require protests to be filed within ten working days of the time the basis of protest is known. 4 C.F.R. § 21.2(b)(2)(1981). The extended date for bid opening was May 22. Control became aware of the facts upon which this allegation is based when the Air Force informed the firm that the bid opening date was extended because no bids had been received as of the initial opening date. This conversation took place on May 18 at the latest. Since Control did not file its protest with the Air Force until June 5 more than one week after bid opening and more than ten working days after it learned its basis of protest, its contention concerning the amendment was untimely filed.

Control alternatively argues that the Government should have accepted the telegraphic bid it submitted on May 22. Control alleges that although the IFB did not authorize telegraphic bids, a contracting official orally authorized a telegraphic bid because of the circumstances of the bid extension. The Air Force denies this alleged oral authorization. Alternatively, Control asserts that the telex was a modification of a bid and, since telegraphic modifications are authorized by the IFB, it should have been accepted.

We find that Control's allegations concerning the telegraphic bid were also untimely filed. By letter of June 11, 1981, the Air Force informed Control that the telegraphic bid had been received late and that telegraphic bids were not authorized in this procurement. Control did not raise its allegations concerning the telegraphic

bid until August 1981 when it submitted its comments in response to the Air Force's report on this matter. Since, as noted above, protests must be filed within ten working days after the basis of protest becomes known, 4 C.F.R. 21.2(b)(2), this allegation was untimely filed.

The protest is dismissed.

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