

DECISION

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

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FILE: B-211655

DATE: May 31, 1983

MATTER OF: Sage Investment Inc.

DIGEST:

1. Protest against a call for a second round of best and final offers filed with GAO after the closing date for receipt of the offers is untimely, and GAO will not consider it on the merits.
2. Incumbent contractor's protest that award of lease to another offeror prevents protester from recouping investment required to construct and remodel office building to meet agency specifications is untimely under GAO Bid Protest Procedures when filed more than 10 days after protester learns of award.

Sage Investment Inc. protests the award of a lease for 13,000 square feet of office space in Vernal, Utah, under request for proposals No. R4-82-18, issued by the Forest Service, Department of Agriculture. We dismiss the protest as untimely.

Sage states that it delivered its best and final offer by hand on January 28, 1983, the amended due date for their submission. At this time the contracting officer opened the offer and, according to Sage, indicated that it was the best one that had been received, though he did not promise to award the contract to Sage. Subsequently, because the Forest Service had failed to provide offerors with a particular form needed for evaluation, the contracting officer requested a new round of best and finals by February 11. Sage states in its protest that it received this request on February 4 and that it was notified of an award to Para Development Corporation on February 18, 1983. Sage filed its protest by letter dated April 26, received in our Office on May 2, 1983.

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Sage argues that the contracting officer improperly requested a second round of best and final offers because he had implied, on the basis of the first one, that Sage was the successful offeror and only a supervisor's approval was required. Sage asserts that the second request was "unethical and should not be allowed." We will not consider this basis of protest because it is untimely. 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. ~~C.F.R. § 21.2(b)(1)~~ (1983). Thus, a protest of a call for a second round of best and final offers must be filed by the closing date for receipt of the offers. See Union Center Venture, B-188666, April 6, 1977, 77-1 CPD 241. Although Sage learned that a second round of best and final offers was being requested on February 4, it did not file the protest until May 2, 1983, considerably after the February 18 due date.

Sage further alleges that the award to Para Development was improper because it denied Sage, which had leased the required office space to the Forest Service since 1964, the opportunity to recoup the investment it had made in constructing and later remodeling the building to meet Forest Service specifications. This basis for protest is also untimely, since Sage knew of the award which allegedly denied it the opportunity to recoup its investment as early as February 18, 1983. Under our procedures, a protest of this type must be filed within 10 working days after the basis for it is known or should have been known. ~~4 C.F.R. § 21.2(b)~~. Sage, as noted above, did not file its protest until May 2, 1983, more than 10 days after it learned of the award.

Although it does not change the result (and was not protested) here, we note that the contracting officer's opening and alleged commenting on Sage's first best and final offer at the time of delivery are actions appropriate to a formally advertised procurement, where all bids are publicly opened at the same time, but are improper in a negotiated procurement. It does not appear, however, that the integrity of the competitive system was prejudiced in this case, since it also does not appear that Para Development was present at the opening or that Sage was advised of Para Development's exact price until it telephoned the contracting officer after receiving notice of the award.

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The protest is dismissed.

Jr *F. H. Barclay, Jr.*
Harry R. Van Cleye
Acting General Counsel