

DECISION

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

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FILE:

B-218473.3

DATE: July 11, 1985**MATTER OF:**

Camel Manufacturing Company

DIGEST:

1. Contracting officer did not act improperly in not seeking a second preaward survey on protester where protester, alleging that contracting officer's nonresponsibility determination was not based on current financial information, provided no specific new information to the contracting officer in support of the allegation.
2. Protest issue raised more than 10 days after protester knew basis of protest is untimely.

Camel Manufacturing Company protests its rejection as a nonresponsible bidder and the June 24, 1985 award of a contract to Kellwood Corporation under invitation for bids (IFB) No. DLA100-85-B-0494, issued by the Defense Logistics Agency's (DLA) Defense Personnel Support Center, Philadelphia, Pennsylvania. We dismiss the protest.

Camel contends that the contracting officer's determination of nonresponsibility because of unsatisfactory financial capability was not based on current financial information, as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.105-1(b)(3) (1984). Camel also argues that the nonresponsibility determination was improper because its proposed subcontractor, East Tennessee Canvas Company, which will produce 100 percent of the general purpose small tents that are being procured, is a planned producer. Camel argues that this status is tantamount to an affirmative determination of responsibility for both Camel and the subcontractor.

Camel states that the determination of nonresponsibility was apparently based upon a preaward survey dated May 7. Camel indicates that by letter dated June 14, it advised the contracting officer that more complete and updated financial information had been furnished to the Defense Contract Administration Services Management Area Atlanta (DCASMA) and requested that a second preaward

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survey be performed. Instead, Camel states, the contracting officer improperly awarded the contract to Kellwood 10 days later, on June 24.

In its protest to our Office, Camel contends that this action violated the FAR, 48 C.F.R. § 9.105-1-(b)(3), which provides:

"Information on financial resources and performance capabilities shall be obtained or updated on as current a basis as is feasible up to the date of award."

Camel further argues that the original preaward survey report was erroneous because the bank that had extended a line of credit to Camel had not been correctly identified. Camel also implies that a statement in the report that no written confirmation of a line of credit had been provided was misleading, since one had not been requested. Finally, Camel argues that the preaward survey report failed to recognize that it uses a zero balance checking account, which accounts for its negative cash flow.

We note first that none of these alleged errors in the preaward survey report was pointed out in Camel's June 14 letter to the contracting officer (or in a protest of the same date to our Office, B-218473.2, which we subsequently dismissed for (1) failure to state a detailed basis for protest and (2) failure to serve the contracting officer, as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(f) (1985)). Neither did the letter point out Camel's alleged intent to subcontract all of the work to a planned producer. Rather, the letter contained only a vague statement that "more complete and updated financial information" had been furnished DCASMA. The letter, however, did not indicate the nature or extent of financial information that had been furnished to DCASMA. Moreover, Camel made no attempt, and has not since attempted, to refute the following preaward survey findings: (1) that of the \$1.2 million available from a \$2 million line of credit, it was impossible to determine the amount available for the contract in question, and (2) that it had a \$656,311 negative cash position and a high liability-to-net-asset ratio.

Under these circumstances, we do not believe the contracting officer was required to delay award while Camel attempted to remedy the finding of insufficient financial capability. See Roarda, Inc., B-204524.5, May 7, 1982, 82-1 CPD ¶ 438. If Camel believed that the contracting

officer's nonresponsibility determination was based upon erroneous or outdated financial information, the firm should have promptly submitted to the contracting officer evidence to support its position. The contracting officer was not required to contact Camel to obtain additional financial information.^{1/} See Pope, Evans and Robbins, Inc., B-200265, July 14, 1981, 81-2 CPD ¶ 29.

Camel's second basis of protest, as noted above, is that the planned producer status of East Tennessee Canvas Company, its 100% subcontractor, is tantamount to an affirmative determination of Camel's responsibility. We consider this basis of protest to be untimely because it was not raised within 10 days of when this basis for protest was known, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985).

Camel knew, not later than June 14, that it had been found nonresponsible by the contracting officer. On that date, Camel asked the contracting officer to consider another preaward survey based on "financial information" provided to DCASMA; Camel then protested here when it learned that the contracting officer instead made award to another company. Although the protest is timely with respect to the first issue, we think it is untimely with respect to the subcontractor/planned producer allegation because Camel knew of that basis for protest by June 14 but did not raise the issue until it protested here on July 2. A protest on that basis should have been filed here by June 28.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel

^{1/} We understand informally that on June 19 a second preaward survey of Camel was conducted in connection with a different solicitation, No. DLA100-85-B-0719. DCASMA again has recommended that no award be made to Camel. This negative recommendation, also based upon inadequate financial capacity, occurred after the time that Camel states it furnished DCASMA with more complete financial information.