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DECISION



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

FILE: B-219687

DATE: October 22, 1985

MATTER OF: SelectTech Services Corporation

DIGEST:

1. Protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on its earlier protest filed with contracting agency is untimely.
2. Protest against alleged improprieties in a solicitation amendment that also requested best and final offers, filed after the closing date established by the amendment is untimely.

SelectTech Services Corporation (SelectTech) protests the award of a contract to Technology/Scientific Services, Inc. (Technology), under request for proposals (RFP) No. F33601-84-R-9070 issued by the Air Force.

We dismiss the protest as untimely.

The RFP solicited operation and maintenance services for the Air Force Flight Dynamics Laboratory. SelectTech alleges that the Air Force, after the closing date for receipt of initial proposals, improperly amended the RFP to require signed statements of availability from key personnel not presently employed by the offeror. SelectTech explains that prior to the closing date, the firm had contacted certain individuals currently employed with Technology, the incumbent contractor, and that these individuals assured SelectTech that they would consider offers from the firm if it were awarded the contract. SelectTech maintains that the firm was treated unfairly because the Air Force required signed statements of availability from these personnel only after the agency determined that the incumbent contractor already had submitted such statements.

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In written negotiations, the Air Force advised SelectTech that signed statements of availability from proposed key personnel were required under the terms of the solicitation and that without such statements the firm's proposal was unacceptable. By letter of June 6, 1985, to the Air Force, SelectTech objected to providing statements of availability "signed by the incumbent's staff." The firm argued that the solicitation did not require such "signed" or "written" statements and that its proposal should be reevaluated on the basis of the verbal assurances it previously had received from the incumbent's staff. On June 10, 1985, the Air Force issued amendment No. 2 to the solicitation responding to SelectTech's June 6 letter. The amendment required that offerors include with their proposals "written" statements of availability and established a closing date for best and final offers of June 13, 1985. We received SelectTech's protest against the solicitation changes incorporated by amendment No. 2 on August 16, 1985.

If SelectTech's June 6 letter to the Air Force (which takes exception to the Air Force's position that the solicitation required signed statements of availability) is considered an agency level protest, the firm's protest here is untimely.

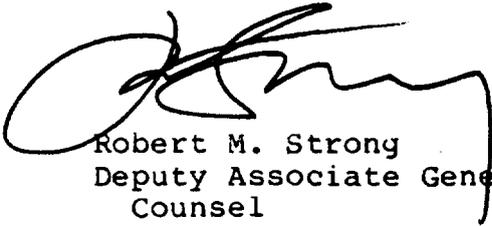
Our Bid Protest Regulations, 4 C.F.R. § 21.2(3) (1985), require that matters initially protested to the procuring activity must be protested to our Office within 10 working days of the protester's receipt of actual notice of the initial adverse agency action on the protest. Adverse action is defined as any action or inaction which is prejudicial to the position taken in a protest filed with an agency. 4 C.F.R. § 21.0(e).

Here, the Air Force's June 10 issuance of amendment No. 2 reiterating that the solicitation required signed statements of availability from proposed key personnel constituted adverse agency action. See Small Business Systems, Inc., B-213009, July 26, 1984, 84-2 C.P.D. ¶ 114. Therefore, SelectTech's protest filed with this Office several months after issuance of that amendment is untimely.

If SelectTech's June 6, letter is not considered an agency protest, the firm's protest to this Office is still untimely. Under section 21.2(a)(1) of our Bid Protest Regulations, a protest made against an alleged impropriety in an RFP incorporated by an amendment to the solicitation must be

filed not later than the next closing date for receipt for proposals following incorporation. 4 C.F.R. § 21.2(a)(1). Therefore, SelectTech's protest to this Office against the changes incorporated into the solicitation by amendment No. 2 filed after the June 13, 1985, closing date established by the amendment is untimely. Trident Motors Inc., B-213458, Feb. 2, 1984, 84-1 C.P.D. ¶ 142; Spacesaver System, Inc., B-211817, Aug. 29, 1983, 83-2 C.P.D. ¶ 272.

The protest is dismissed.



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