

DECISION

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

FILE: B-221850 **DATE:** February 28, 1986
MATTER OF: ABC Appliance Repair Service

DIGEST:

1. Protest against solicitation amendments' multiple requests for best and final offers and change in location for receipt of offers is untimely when not filed with the agency until after contract award. Subsequent protest to GAO is also untimely since it was not initially timely protested to the agency.
2. GAO will not consider the merits of an untimely protest under either the significant issue or good cause exceptions to GAO timeliness requirements, since there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of a protest, and the protest does not present a unique issue of widespread interest to the procurement community.
3. There is no legal basis to object to a below-cost offer. Whether an offeror can meet contract requirements in light of its low price is matter of offeror responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

ABC Appliance Repair Service (ABC) protests the award of an indefinite-requirements-type contract to Dodson-Gough Management Systems, Inc. (Dodson), under solicitation No. 9FCG-OSP-N-A0864/85, issued by the General Services Administration (GSA) for the repair and reconditioning of household appliances in Oahu, Hawaii.

We summarily dismiss the protest without obtaining an agency report from GSA, since it is clear from material furnished on behalf of ABC that the protest is without legal merit. 4 C.F.R. §21.3(f) (1985).

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ABC alleges that GSA made three requests for best and final offers so that the contract could ultimately be awarded to Dodson, and that GSA should not have changed the location where offers were to be received. We find these protest grounds untimely. Our Bid Protest Regulations require that protests based on alleged improprieties incorporated into a solicitation by an amendment must be filed not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1985). Here, the solicitation amendments requested best and final offers and specified where they were to be received. Since ABC objects to alleged improprieties which were or should have been evident from the amendments and ABC did not protest these amendments until after award of the contract to Dodson, its protest to GSA on these grounds was untimely. See Martin Marietta Data Systems et al., B-216310 et al., Aug. 26, 1985, 85-2 C.P.D. ¶ 228. Where a protest is filed first with the contracting agency, a subsequent protest to our Office will be considered only if the initial protest was timely. 4 C.F.R. § 21.2(a)(3). Since ABC's initial protest on these grounds was not timely filed with GSA, this portion of its protest subsequently filed with this Office is untimely and will not be considered. Micro Research, Inc., B-220778, Jan. 3, 1986, 86-1 C.P.D. ¶ ____.

ABC argues that even if untimely, its protest should be considered under the timeliness exceptions in our regulations where good cause is shown or the protest raises an issue significant to the procurement community. See 4 C.F.R. §21.2(c). ABC believes that the change in location for receipt of offers and the long delay in GSA's response to its initial protest raise issues significant to the procurement system.

The good cause exception to the timeliness requirements is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. Knox Manufacturing Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 C.P.D. ¶ 281. That is not the case here.

Our Office will review an untimely protest under the significant issue exception only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. J. Ellis Designs, B-218980 et al., Aug. 1, 1985, 85-2 C.P.D. ¶ 116. Since we have considered issues of change in location for the receipt of offers and delay by a contracting agency in responding to a protest, we will not

invoke the exception here. See Dale Woods, B-209459, Apr. 13, 1983, 83-1 C.P.D. ¶396; Rodenberg's Floor Coatings, Inc., B-215807, Nov. 23, 1984, 84-2 C.P.D. ¶ 548.

ABC also protests that Dodson used unreasonably low, below-cost figures in its revised offer, making its offer financially irresponsible and, therefore, nonresponsive. We will not consider this allegation. The submission of a below-cost offer is not illegal and provides no basis for challenging an award of a firm, fixed-rate contract to a responsible contractor, since such a contract is not subject to adjustment based on the contractor's cost experience during performance and places no obligation on the contracting agency to pay more than the rate at which contract award is made. See ORI, Inc., B-215775, March 4, 1985, 85-1 C.P.D. ¶ 266. Moreover, there are various valid motivations which may influence a firm to offer a below-cost price. 50 Comp. Gen. 788 (1971).

Whether the low offeror can perform the contract at the price offered is a matter of responsibility. Before award, the contracting officer must make the affirmative determination that the prospective awardee is a responsible contractor. Federal Acquisition Regulation, 48 C.F.R. § 9.103(b) (1984). Our Office does not review protests against affirmative determinations of responsibility, unless either fraud or bad faith on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Automatic Data Processing, Inc., B-217413, Jan. 9, 1985, 85-1 C.P.D. ¶ 30. Neither exception is alleged here.

The protest is dismissed.



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