



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comanche Natural Gas Co., Inc.--Reconsideration

File: B-224314.2

Date: November 25, 1986

DIGEST

Dismissal of original protest is affirmed, and protest will not be reopened, where protester's comments on contracting agency's report were received in the General Accounting Office (GAO) after the 7-day period for filing comments, even though the protester's comments were mailed to GAO within the 7-day period.

DECISION

Comanche Natural Gas Co., Inc. (Comanche), requests reconsideration of our dismissal of its protest under request for proposals (RFP) No. DABT39-86-R-0203, issued by the Department of the Army for the supply of natural gas to the Army facility at Fort Sill, Oklahoma. Comanche protested the rejection of its proposal, contending that the solicitation's requirement for a 10-inch, high-pressure main utility line was an "excessive" requirement, and that the agency should compare price quotations on the basis of the "demand rate" instead of the offeror's estimated monthly costs for quantities to be furnished. Comanche also challenged the low bidder's compliance with utility regulatory requirements.

We dismissed the protest because Comanche failed to comply with the requirement of our Bid Protest Regulations that, within 7 (working) days of its receipt of the agency report on the protest, the protester file in our Office either its comments on the agency report or a statement requesting that the case be decided on the existing record. 4 C.F.R. § 21.3(e) (1986). Comanche contends that it did not fail "to respond to any notices." We affirm our prior dismissal.

Comanche's comments on the agency report were received in our Office by regular mail 3 working days late (at which time its protest had already been dismissed), in an envelope post-marked 12 calendar days prior to its receipt here. Under our Regulations the protester's comments must be filed--that is,

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received in our Office--within the 7 working-day period provided for under our Bid Protest Regulations. See U.S. Shutter Co.--Reconsideration, B-219952.2, Jan. 15, 1986, 86-1 C.P.D. ¶ 42.

Concerning the filing of protest documents, we have also previously said that a protester makes use of the mails at its own risk, and any delay or failure in the delivery of the mail does not provide a basis for waiving our Bid Protest Regulations. California Shorthand Reporting--Request for Reconsideration, B-221173.2, Feb. 18, 1986, 86-1 C.P.D. ¶ 170. Since our published Regulations and our notice to Comanche acknowledging its protest expressly put the protester on notice of the Regulations' requirement for the protester's filing in response to the agency report, it was incumbent upon the protester to exercise the degree of diligence necessary to comply with that requirement. Ariston Prepared Foods, Inc., B-220367.3, Apr. 7, 1986, 86-1 C.P.D. ¶ 334. Under the Competition in Contracting Act of 1984 (CICA) (31 U.S.C. § 3551 et seq. (Supp. III 1985)), the bid protest process may not be delayed by the failure of a party to make a filing within the time period established by our procedures, which are prescribed to assure the expeditious decision of protests. See 31 U.S.C. § 3555(a). It is, therefore, our policy not to reopen a protest file where the protester has failed to file in our Office its comments on the agency report in a timely manner. See U.S. Shutter Co.--Reconsideration, B-219952.2, supra, 86-1 C.P.D. ¶ 42 at 2. Comanche's comments were not filed in our Office by the date due, and its protest was, therefore, properly dismissed.

In any event, we note that based upon the record developed the matters of which Comanche complained were not for our consideration since on one hand they were untimely and, on the other hand, they are not within our bid protest jurisdiction. The agency's requirement for a 10-inch main gas line and the basis for cost comparison were stated in the RFP, but Comanche did not protest these alleged solicitation defects until after the closing date for receipt of proposals. Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1986). Comanche's protest of the RFP specifications and cost comparison scheme raised after the closing date was, therefore, untimely. See Terry B. Armentrout Engineering & Business Consulting, B-222311, May 23, 1986, 86-1 C.P.D. ¶ 485. Comanche's protest otherwise essentially

consisted of questions and innuendo concerning the regulatory status of the low bidder, none of which offers any proof of impropriety on the part of the agency in conducting the procurement. The protester has the burden of proving its case, and we will not conduct investigations for the purpose of establishing whether a protester may have a valid basis for protest. Swagger Communications, Inc.--Reconsideration, B-220000.4, Dec. 23, 1985, 85-2 C.P.D. ¶ 702.

for Seymour E. Epps
Harry R. Van Cleve
General Counsel