



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Red Fox Industries, Inc.--Reconsideration
File: B-225696.2
Date: March 18, 1987

DIGEST

Dismissal of protest against failure to consider firm's proposal in procurement restricted to mobilization base producers, not filed until after closing date of solicitation, is affirmed. Restriction was clearly stated in solicitation and protester, who is not a mobilization base producer, was not eligible for award of contract.

DECISION

Red Fox Industries, Inc., requests reconsideration of our decision in Red Fox Industries, Inc., B-225696, Feb. 20, 1987, 87-1 C.P.D. ¶ ___, in which we dismissed as untimely a protest of the Department of the Army's failure to consider Red Fox's offer under request for proposals (RFP) No. DAAA09-86-R-1900. We affirm the decision.

The synopsis in the Commerce Business Daily by which the Army initiated this procurement stated that this was a mobilization base procurement restricted to three named firms. As we noted in our prior decision, the RFP was issued on November 21 and proposals were due on December 31. The contract was awarded to one of the three named firms.

Red Fox stated that an Army contract specialist advised it on December 22 that the firm would be eligible for award if it submitted a proposal, even though Red Fox was not a mobilization base producer. Further, Red Fox argued that a May 21, 1986, Mobilization Base Policy established a moratorium on such restrictions except in circumstances not applicable here. Red Fox argued that it was not until January 22, 1987, that it learned, in a meeting with the Army, that the firm's proposal would not be considered; on February 4, Red Fox protested the Army's determination to exclude the firm from the competition to our Office. We found Red Fox's protest to be untimely because the mobilization base restriction which excluded Red Fox from the procurement was clearly stated in the RFP and Red Fox did not file its protest before the closing date for the solicitation, as required by our Bid

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Protest Regulations for apparent solicitation improprieties.
4 C.F.R. § 21.2(a)(1) (1986).

Red Fox contends that we misconstrued its protest as a challenge to the Army's determination to conduct this acquisition as a mobilization base procurement when, in fact, Red Fox was contesting the Army's failure to consider the firm for inclusion in the mobilization base and, thus, eligible for award of the contract. Red Fox asserts that its protest on this latter basis was timely because it was filed within 10 working days of the firm's meeting with the Army, when the protester learned that it would not be considered for award.

Red Fox misapprehends the importance of the mobilization base restriction in the RFP. This RFP limited the procurement to approved mobilization base producers, and there is no allegation that it even contemplated expansion of the mobilization base. Since Red Fox chose to submit its proposal without challenging this clearly stated restriction prior to the closing date, and since Red Fox was not a mobilization base producer by the time the procurement closed, Red Fox was not eligible for award of the contract. Abbott Products, Inc., B-221695, et al., Feb. 10, 1986, 86-1 C.P.D. ¶ 145.

In sum, it was the restriction of the procurement to mobilization base producers and Red Fox's own acknowledged failure to satisfy this condition which excluded Red Fox from the competition, and Red Fox failed to protest this RFP restriction prior to the closing date. Moreover, even assuming that Red Fox relied upon the alleged oral advise of the contract specialist (which he denies giving) and the May 1986 Mobilization Base Policy, in our view the protester acted at its own risk in not timely protesting the specific, inconsistent provisions of the RFP. The dismissal of the protest is affirmed.

for *Hyman Efron*
Harry R. Van Cleve
General Counsel