



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diversified Computer Consultants
File: B-225714.2
Date: June 19, 1987

DIGEST

1. Protest to contracting agency which was not filed within 10 days of debriefing in which protester learned that its proposal would not be considered within the competitive range was untimely, and any subsequent protest to General Accounting Office is also untimely.
2. A protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.
3. General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception of the Bid Protest Regulations where the protest does not raise one or more issues of first impression that would have widespread significance to the procurement community; an allegation of bias that is unsupported by the record does not raise such an issue.

DECISION

Diversified Computer Consultants protests the rejection of its proposal as technically unacceptable by the United States Department of Agriculture (USDA) under request for proposals (RFP) No. 00-87-R-7 for laptop computers. Diversified alleges that the USDA improperly used the concept of "nonresponsiveness" as a pretext to reject its proposal which, according to Diversified, the USDA had no intention of accepting. Diversified also complains that the solicitation was significantly amended just 8 working days before the due date for initial offers, thereby allowing Diversified insufficient time in which to respond to the amendment.

We dismiss the protest as untimely.

The solicitation was issued on November 12, 1986, and by the first of two amendments called for the submission of initial

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offers by January 5, 1987. By letter dated January 30, the USDA notified Diversified that, due to a number of deficiencies in its proposal, its offer was not considered to be within the competitive range. These deficiencies were identified in the USDA letter.

On February 9, Diversified's vice president spoke with the contracting officer telephonically and arranged for a complete debriefing. On February 11, three members of the technical evaluation team, along with various other personnel from the contracting office debriefed representatives of Diversified on all of the deficiencies found in its proposal.

Thereafter, on March 10, Diversified filed a protest with the agency, requesting that its proposal be reinstated and considered for award. The agency denied Diversified's protest on April 14. On April 13, Diversified filed this protest in our Office.

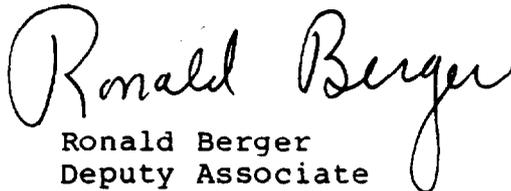
Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), a protester is required to file its protest in our Office not later than 10 days after the basis of protest is known or should have been known to the protester. Under 4 C.F.R. § 21.2(a)(3), a protester must follow this same requirement when filing a protest with the contracting agency, unless the contracting agency imposes a more stringent time requirement. Accordingly, Diversified was required to file its protest concerning the technical deficiencies in its proposal either with our Office or with the USDA within 10 working days of when it knew or should have known of the basis of its protest. We believe the protester was aware of several of the agency's bases for rejection of the proposal upon receipt of the January 30 letter, and certainly after the debriefing. Consequently, Diversified's initial agency protest, which was filed 19 working days after the debriefing was untimely, and any subsequent protest to this Office was also untimely. Insofar as the protester claims that the amendment to the solicitation allowed insufficient time to respond before proposals were due, that basis for protest is also untimely. An argument that an amendment to a solicitation allowed insufficient time for submission of offers should be made prior to the time for receipt of offers, since the argument relates to an alleged impropriety on the face of the solicitation. J.E. Steigerwald Co., Inc., B-218536, Apr. 19, 1985, 85-1 CPD ¶ 453; 4 C.F.R. § 21.2(a)(1).

To the extent Diversified's complaint amounts to an allegation that USDA was biased against it because of a controversy that arose under another contract awarded by the agency to it in 1981, we point out that the protester has the

burden of affirmatively proving its case, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Cryogenics Consultants, Inc., B-225520, Mar 4, 1987, 87-1 CPD ¶ 249. There is no support in the record for the allegation of bias. Rather, the protester simply infers a bias on the part of the agency as a result of the agency's rejection of its proposal for what it characterizes as picayune reasons and the short time allowed for the submission of initial proposals after an amendment to the solicitation was issued, and on this basis the protester argues that, notwithstanding the untimely submission of its protest, we should consider it under the "significant issue" exception contained in our Bid Protest Regulations, 4 C.F.R. § 21.2(c).

We will consider an otherwise untimely protest where the protest raises an issue of first impression that would have widespread significance to the procurement community. McCain Associates, B-226533, Mar. 2, 1987, 87-1 CPD ¶ 336. The protest does not meet this standard, and we therefore will not consider it. First, as indicated, the allegation of bias is unsupported, and we will not invoke the significant issue exception on the basis of a unsupported allegation. Second, we have on numerous occasions dealt with the applicability of the concept of responsiveness as it relates to negotiated procurements, see, e.g., Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 CPD ¶ 383; the argument that an amendment to a solicitation allowed insufficient time for offerors to respond before the date established for the receipt of initial proposals, J.E. Steigerwald Co., Inc., supra; and most importantly, the merits of an agency's rejection of a proposal for technical deficiencies. See, e.g., Digital Devices, Inc., B-225301, Mar. 12, 1987, 87-1 CPD ¶ 278.

The protest is dismissed.


Ronald Berger
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General Counsel