



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vacco Industries--Second Request for
Reconsideration
File: B-227088.3
Date: June 30, 1987

DIGEST

A protest to a contracting agency alleging improprieties in a request for proposals is untimely when filed with the protester's proposal. It is not relevant that the protest was a separate letter from the proposal since the protest was enclosed in the same envelope as the proposal, because the contracting agency is not obligated to read or evaluate proposals until after the closing time.

DECISION

Vacco Industries requests that we reconsider our May 22, 1987, decision affirming our May 4 dismissal of Vacco's protest alleging specification improprieties in request for proposals (RFP) No. N00024-86-R-4462(S), issued by the Naval Sea Systems Command. See Vacco Industries--Reconsideration, B-227088.2, May 22, 1987, 87-1 C.P.D. ¶ ____.^{1/} We affirm the prior decision.

Vacco had filed its initial protest to the Navy with its proposal in response to the RFP. In our May 22 decision, we stated that we considered the agency-level protest alleging solicitation improprieties to be untimely since it was filed with the proposal, instead of before the closing time as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986); we cited Litton Datamedix, B-219731, Sept. 23, 1985, 85-2 C.P.D. ¶ 322, as support for our position. Under our Bid Protest Regulations, when a protest is filed with the contracting agency first, a subsequent protest to our Office will be considered only if the agency-level protest was timely. 4 C.F.R. § 21.2(a)(3).

^{1/} By notice of May 4 we dismissed Vacco's original protest as untimely. Our May 22 decision responded to Vacco's request that we reconsider that dismissal.

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Accordingly, as Vacco's agency-level protest was untimely, we affirmed our earlier dismissal.

Vacco charges that we erred in our previous decision because the circumstances set forth in the Litton Datamedix decision are significantly different from the circumstances here and, therefore, the Litton Datamedix ruling does not apply to Vacco's protest. Vacco asserts that a key factor in Litton Datamedix was that the protester had taken exception to the solicitation's terms in its actual proposal, whereas here, Vacco's protest to the Navy was not a part of its proposal. Vacco states that its protest to the Navy was a separate letter with attachments that was filed approximately 3 hours before the closing time set for receipt of initial proposals. Therefore, Vacco argues, its protest was filed with the Navy before the time set for receipt of proposals, and was timely.

The Navy has advised our Office that Vacco's September 5, 1986, protest letter to the contracting activity was enclosed in the same envelope as Vacco's initial proposal. The letter itself supports the Navy's statement, as it states, "Notwithstanding the above protest, we have enclosed a bid for the subject solicitation." Thus, while the protest letter literally was not a part of the Vacco proposal, it was not read by Navy personnel until after the closing time for receipt of initial proposals.

In our opinion, Vacco's protest letter was filed with the Navy in an untimely manner. We have consistently held that a protest alleging solicitation improprieties is untimely when it is filed with a bid or proposal. See, for example, Precision Dynamics Corp., B-207823, July 9, 1982, 82-2 C.P.D. ¶ 35. It is not relevant that the protest may have been a separate letter so long as it was enclosed in the same envelope as the proposal. Id.; Trident Motors Inc., B-213458, Feb. 2, 1984, 84-1 C.P.D. ¶ 142. Since there is no obligation that a contracting agency open, read or evaluate proposals until after the closing time, the contracting agency has no prior notice of a deficiency alleged in a protest filed with a proposal, so that the protest cannot properly be considered as filed before the closing time. Colorado Research and Prediction Laboratory, Inc.--Reconsideration, B-199755.2, May 11, 1981, 81-1 C.P.D. ¶ 369

at 4. Thus, Vacco's protest to the Navy was untimely filed, and we therefore properly did not consider it on the merits. 4 C.F.R. § 21.2(a).

We affirm the May 22 decision.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel