



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aztek
File: B-227603
Date: September 29, 1987

DIGEST

Protest that proposal improperly was found unacceptable and that no discussions were held is dismissed as untimely where it was not filed within 10 working days after the protester learned the basis for protest.

DECISION

Aztek protests the rejection of its offer in response to request for proposals No. MDA 905-87-R-0004, issued by the Uniformed Services University of the Health Sciences (USUHS). The solicitation was issued to procure a specified graphic image system, or equal. Aztek protests that its proposal was fully compliant with the requirements of the RFP, and complains that USUHS failed to question Aztek or request further information that would have answered the agency's concerns. We dismiss the protest.

In response to the protest, USUHS reports that by letter dated May 11, 1987, it notified Aztek that the firm's proposal was unacceptable because it did not meet the essential characteristics of the RFP, and that no revisions would be considered. USUHS further reports that during a telephone conversation on May 24 the contracting officer explained to Aztek the specific bases on which the proposal was rejected. USUHS argues that we therefore should dismiss the protest as untimely because it was not filed until June 17, more than 10 working days after Aztek learned the protest basis. In this respect, under our Bid Protest Regulations, to be timely a protest based on other than an apparent impropriety in the solicitation must be filed within 10 working days after the protester knows the basis for the protest. 4 C.F.R. § 21.2(a)(2) (1987).

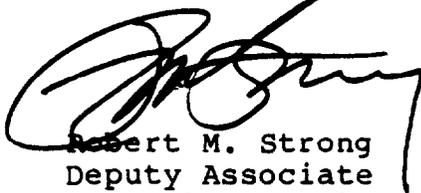
In its comments on the USUHS report, Aztek does not dispute that it learned the protest basis from the May 11 letter, which it received on May 17, and from the May 24 telephone conversation. Rather, Aztek argues that its protest is

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timely because it was submitted to our Office on May 17. Aztek also argues that our Office already has conceded the timeliness of the protest because we sent Aztek a letter acknowledging the protest and we requested USUHS to submit a report on the matter.

Our Office does not have any record showing that Aztek filed a protest here on May 17. Rather, we received a protest dated June 17 on July 1, and an amended protest dated June 24 on June 30. Consequently, since these letters were received more than 10 working days after Aztek knew its protest basis, the protest is untimely and will not be considered on the merits. As to Aztek's point that we must consider the protest because we conceded its timeliness by acknowledging it and requesting a report from USUHS, our Regulations provide that we will dismiss a protest at any time during the proceeding when the propriety of doing so becomes clear. 4 C.F.R. § 21.3(f).

The protest is dismissed.



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