

Request - GL



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Nationwide HealthSearch

File: B-228148

Date: November 24, 1987

DIGEST

Where protester waited more than 9 months after filing a protest with the contracting agency (and 3 months after being advised that the agency referred the matter for investigation) before filing a protest with General Accounting Office (GAO), the protester did not diligently pursue the matter and its protest to GAO is untimely.

DECISION

Nationwide HealthSearch protests the award of a contract to B&B Professional Services under request for proposals (RFP) No. 86-11. The RFP, issued by the Indian Health Service (IHS), Department of Health and Human Services, as a total set-aside under the Buy Indian Act, was for the acquisition of physicians' services at various IHS hospitals. Nationwide contends that B&B Associates may have colluded with another offeror in preparing its proposal. Nationwide also contends that because principals of B&B are previous IHS employees, and relatives of Aberdeen Area IHS officials, it appears the contracting officer was biased in B&B's favor.

We dismiss Nationwide's September 10, 1987, protest to this Office as untimely because the firm did not diligently pursue this matter after initially filing an agency level protest on December 6, 1986. Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1987).

Three of the five offers received were determined unacceptable. One of the offerors, Dr. B.J. Desai, was determined ineligible as he did not qualify as a Buy Indian contractor. Two awards were made on November 15, 1986, to Nationwide in the amount of \$409,276, and to B&B in the amount of \$182,000.

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A memorandum of November 19, 1986, to the contracting officer from the Service Unit Director of the Sisseton, South Dakota IHS Hospital, detailed conversations between the Service Unit Director and Dr. Desai, one of the rejected offerors who also was a radiologist working under contract for the Sisseton Hospital. According to the memorandum, Dr. Desai indicated that he had had discussions with both B&B and Nationwide, apparently concerning possible subcontracting arrangements. Nationwide contends that Dr. Desai's discussions with B&B prior to submitting his offer constituted improper collusion.

On December 9, Nationwide sent a letter to the contracting officer protesting that there had been collusion in the procurement process. On February 25, 1987, Nationwide sent a second letter repeating its allegation and requesting that the contracting officer investigate the charges. By letter of June 9, IHS advised Nationwide that the matter was being referred to the Health Resources and Services Administration (HRSA) for investigation. This investigation is not expected to be completed for several months. Nationwide then protested to our Office on September 10, stating that it had received no response to its agency protest.

When a protest has been filed with the contracting agency initially, the protester is not permitted to delay filing a subsequent protest with our Office until it eventually receives a decision from the contracting agency. Rather, a protester may wait only a reasonable time for a contracting agency's response before filing a protest here, or its protest will be deemed untimely. See REACT Corp., B-219642, Aug. 22, 1985, 85-2 CPD ¶ 215 (protest dismissed as untimely filed where protester waited 3 months after protesting to agency before filing at the General Accounting Office). Here, although Nationwide knew in November 1986 that an award had been made to B&B, and first protested the award in December, Nationwide waited more than 6 months for the agency's response--until June 1987--without protesting to our Office. After the agency's June response that it had referred the matter for investigation, Nationwide then waited 3 more months before finally protesting to our Office. Under these circumstances, Nationwide failed to diligently pursue this matter, and we therefore dismiss its protest as untimely.

In any event, IHS has referred the matter to HRSA for investigation of the alleged collusion, although IHS states that no evidence of collusion has yet been shown. If the investigation discloses any evidence of collusion, such evidence will be turned over to the Department of Justice for appropriate action.

Nationwide did not allege bias on the part of agency officials in its December 1986 agency protest; the firm raised this argument for the first time in its September 1987 protest to our Office. While it is not clear when Nationwide first became aware of the circumstances on which its bias allegation is based, we see no reason why the allegation could not have been raised earlier than 10 months after the contract award. Again, this is an instance of Nationwide's failure to pursue its basis of protest diligently. Thus, this allegation too is untimely. See Automation Management Corp., B-224924, Jan. 15, 1987, 87-1 CPD ¶ 61. Moreover, the agency explains that while the Aberdeen Area Tribal Affairs Officer is in fact related to one of the B&B principals, that individual had no involvement in the procurement. We find no evidence in the record that the award to B&B resulted from agency bias or bad faith. See PacOrd, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7.

The protest is dismissed.


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General Counsel