



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Federal Contracting Corporation--  
Reconsideration  
File: B-224064.4  
Date: February 8, 1988

### DIGEST

1. Where protester is in receipt of information which gives rise to basis of protest, it has 10 days to file a protest and protest filed after that date is untimely.
2. Where protester waited 2 years after contract award before filing a protest with the General Accounting Office (GAO), the protester did not diligently pursue the matter and its protest to GAO is untimely.

### DECISION

Federal Contracting Corporation (FCC) requests reconsideration of our decision dismissing its protest of the cancellation of request for proposals (RFP) No. DTCG29-86-R-03515 issued by the United States Coast Guard (USCG).

Although the protester characterizes its submission as a request for reconsideration, we find that the protester is actually alleging new protest grounds, which we dismiss because the issues are either untimely or not for review by our Office.

FCC's original protest, filed on August 19, 1986, alleged that the agency improperly conducted a comparison between the costs of in-house and contractor performance of work associated with maintaining aids to navigation buoys at the Mobile, Alabama, USCG base. The protester alleged that the government cost figures improperly had been adjusted after the opening of contractor proposals. Our Office did not however address the merits of the protest, but dismissed the protest under our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1987), upon discovering that the protester had failed to furnish a copy of its protest to the individual or location designated by the contracting agency in the solicitation for receipt of protests within 1 day of filing

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with our Office. Federal Contracting Corp., B-224064, Oct. 10, 1986, 66 Comp. Gen. \_\_\_\_\_, 86-2 CPD ¶ 420. We concluded that the protester's failure to provide the contracting officer with a copy of its protest caused the agency to miss the statutory deadline for filing its report with our Office, and such failures frustrate our efforts to consider expeditiously all objections to agency procurement actions. We affirmed our dismissal in Federal Contracting Corp.--Request for Reconsideration, B-224064.2, Nov. 3, 1986, 86-2 CPD ¶ 512.

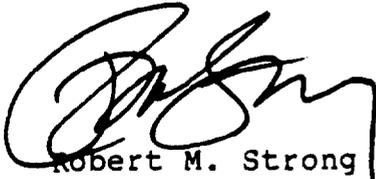
The protester now proffers an undated letter containing a government cost somewhat higher than that used in the initial cost comparison and a should cost determination form showing that the government estimate was prepared and approved prior to receipt of best and final offers. The contractor notes that the same signature appears on both documents, showing that a government representative who participated in preparing the government's bid also reviewed the contractors' offers prior to receipt of best and final offers. The protester argues this shows the agency improperly revised its estimate of the work after examining the private contractor offers. Our file contains a letter from the protester dated October 1, 1986, showing that contractor had both the initial and revised cost comparison. The protester is clearly untimely in raising this issue as our Bid Protest Regulations require that protests must be filed not later than 10 working days after the basis for the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2); Joseph H. Carter, B-227094.2, Nov. 9, 1987, 87-2 CPD ¶ 463.

The protester also charges that the in-house estimate was unfairly prepared on a lump-sum basis whereas private offerors had to offer unit prices on an indefinite quantity, which substantially raised the offerors' risk and costs. While it is not clear when the protester first became aware of this basis for protest, we see no reason why the allegation could not have been raised earlier than 21 months after contract award (March 1986). Inasmuch as the protester has failed to pursue this matter diligently, we dismiss its protest as untimely. Nationwide HealthSearch, B-228148, Nov. 24, 1987, 87-2 CPD ¶ 512.

The protester also advises that it has been unable to obtain records to confirm that the agency is operating the buoy maintenance function in accordance with the statement of work used in the RFP. Our review of an agency's decision to perform services in-house is limited to circumstances where

the agency has issued a solicitation for cost comparison and there is an allegation that the resulting cost comparison is faulty or misleading. Etc. Technical & Professional Services, Inc., B-227554, July 2, 1987, 87-2 CPD ¶ 12. The agency's current staffing is simply irrelevant to the issue of whether a cost comparison performed 2 years ago was faulty. Nor for that matter has the protester offered any evidence that the agency is not performing as indicated by the cost comparison.

Accordingly, the protest is dismissed.



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