



The Comptroller General
of the United States

Washington, D.C. 20548

Charlton

Decision

Matter of: Copperweld Southern Division
File: B-231853
Date: August 2, 1988

DIGEST

Protest that agency improperly failed to send protester a solicitation is untimely when filed more than 10 working days after bid opening date as published in the Commerce Business Daily.

DECISION

Copperweld Southern Division protests the award of a contract to Loos & Company, Inc., for non-corrosive 2-wire strand under invitation for bids (IFB) No. DACW66-88-B-0021 issued by the Army Corps of Engineers. Copperweld complains that it was improperly deprived of the opportunity to submit a bid because it did not receive a copy of the solicitation.

We dismiss the protest.

The Army has advised us that the IFB, issued on March 3, 1988, was synopsisized in the Commerce Business Daily (CBD) on February 9, with an April 5 bid opening date specified. On June 23, the Army, after receiving three bids, awarded the contract to Loos, the apparent low bidder. Copperweld filed a protest with our Office on July 1, in which it complains that it was unfairly excluded from the bidding process because it never received a solicitation. Copperweld further contends that its failure to receive a solicitation resulted from the Army's negligence in not furnishing Copperweld a Mailing List Application Form, which enables potential bidders to be included on the list of those contractors to whom solicitations are issued. Copperweld requests that the requirement be resolicited so that it will have an opportunity to bid.

A CBD synopsis places prospective bidders on constructive notice of the solicitation and its contents. See Federal Services Group, B-224605, Dec. 23, 1986, 86-2 CPD ¶ 468. Therefore, Copperweld, upon publication of the February

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synopsis, was charged with constructive notice of the procurement and the April 5 bid opening date. When Copperweld failed to receive a copy of the solicitation by April 5, the last day on which it could have successfully bid for the contract, it should have known of its basis for protest. Marine Instrument Co., B-228462, Nov. 9, 1987, 87-2 CPD ¶ 468. Under our Bid Protest Regulations, a protest concerning other than an apparent impropriety in a solicitation must be filed with the contracting agency or this Office within 10 working days after the protester knows or should have known the basis of its protest. 4 C.F.R. § 21.2(a)(2) (1988). Because the 10 working day period for Copperweld's protest began on April 5, the July 1 protest to our Office is untimely. Id.

We note that on April 8 Copperweld wrote to the Army complaining of its failure to receive a solicitation. On April 22, the agency responded to the protester expressing its regrets concerning the problem. Even assuming this April 8 letter constituted a protest and that the agency's letter of April 22 constituted a denial of its protest, Copperweld's protest to our Office is still untimely. Our Bid Protest Regulations provide that, when a protest is filed timely with the contracting agency, a subsequent protest to our Office must be filed within 10 working days of the protester's receipt of notice of initial adverse agency action, which here was the denial of Copperweld's agency-level protest. 4 C.F.R. § 21.2(a)(3). Accordingly, Copperweld's letter of July 1, filed more than 10 working days after Copperweld received the agency response, is untimely.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel