



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Scholarly Publications

File: B-230745.2

Date: August 30, 1988

DIGEST

1. Protest against agency's determination to exclude offeror from the competitive range is untimely where it was not filed within 10 working days after the protester learned of the exclusion and the basis for the exclusion.
2. Protest alleging that standard industrial classification code used to determine small business size standard should have been included in solicitation is untimely since it was not filed prior to the closing date for receipt of initial proposals.

DECISION

Scholarly Publications protests its exclusion from the competitive range under request for proposals (RFP) No. 88-3, issued by the Library of Congress, for the placement of new and renewal subscriptions for periodicals and related services. Scholarly Publications alleges that the Library was "inconsistent, illogical, and unfair" in the technical evaluation of its proposal, and that its proposal was excluded because of an agency bias against small businesses. The protester also alleges that the RFP should have contained standard industrial classification (SIC) code 7389, to be used to determine the small business size standard for this procurement.

We dismiss the protest.

The RFP was issued on February 1, 1988 and the closing date for receipt of initial proposals was March 17. In a letter dated July 6, the Library notified the protester that it had completed the evaluation of its offer and had determined that it did not fall within the competitive range of offers received. Included in the letter was a list of Scholarly's numerical scores for seven evaluation factors. Scholarly was dissatisfied with the evaluation and pursued the matter by making telephone calls to the Library and by a letter to

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the contracting officer dated July 29, stating that it was a competent offeror under the RFP. The Library responded in a letter dated August 4 by reiterating that Scholarly was not determined to be within the competitive range in accordance with the evaluation criteria set forth in the RFP. Scholarly then filed its protest with our Office on August 18.

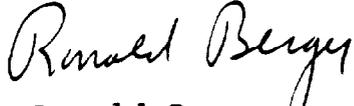
The protester's allegations of agency bias and improper evaluation and exclusion of its proposal from the competitive range are untimely under our Bid Protest Regulations, which provide that a protest based on other than an apparent impropriety in the solicitation must be filed within 10 working days after the protester knows the basis for the protest. See 4 C.F.R. § 21.2(a)(2) (1988); Circon Acmi, B-229755, Jan. 19, 1988, 88-1 CPD ¶ 51. Here, the 10-day period began to run when Scholarly received the July 6 letter which excluded it from the competitive range and which included the evaluation scoring results. Although Scholarly does not indicate when it received the July 6 letter, we generally assume, for timeliness purposes, receipt within 1 calendar week from mailing. See Adrian Supply Co.--Reconsideration, B-225472.3, Mar. 23, 1987, 87-1 CPD ¶ 328. In this regard, we consider the date typed on the agency's letter, July 6, to be sufficient evidence of mailing on or about that date, and we have no reason to believe that Scholarly received it more than 1 calendar week thereafter. Id. On that basis, Scholarly presumably received the Library's letter on July 13, and its protest with our Office, filed more than 4 weeks later, is untimely.

In any event, Scholarly clearly received the letter, at the latest, by July 29, the date of its letter to the Library which refers to the Library's evaluation. Moreover, the July 29 letter indicates that it knew of the basis of its protest on that date; among other things, it states that "[w]e believe that the measuring criteria used to prematurely eliminate us from selection were prejudicial toward large businesses." As a result, to be timely, Scholarly's protest to our Office had to be filed within 10 days of July 29; since it was not filed until August 18, more than 10 days later, it is untimely.

Scholarly also complains that the solicitation contained no indication of the small business size criteria for the procurement, and asserts that the RFP should have contained SIC 7389. (Apparently, although this was not a small business set-aside, small businesses were to receive an evaluation preference under the terms of the RFP.) Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation which are apparent prior to

bid opening or the closing date for receipt of initial proposals must be filed prior to bid opening or the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a) (1) (1988). The alleged omission of the SIC, an obvious defect, should have been protested prior to the initial closing date. Since the protester failed to do so, its protest of this issue is untimely.^{1/}

The protest is dismissed.



Ronald Berger
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General Counsel

^{1/} We note that the initial determination of the appropriate SIC code is for the contracting officer, with affected firms having the right to appeal to the Small Business Administration whose determination on such matters is conclusive. Libby Corp., B-228326, Oct. 9, 1987, 87-2 CPD ¶ 351.