



The Comptroller General
of the United States

Washington, D.C. 20548

Milfee

Decision

Matter of: EG&G Pressure Science--Request for
Reconsideration

File: B-236049.2

Date: August 25, 1989

DIGEST

1. Protest based upon alleged solicitation impropriety which is not filed before the closing date for receipt of proposals is untimely.
2. Protest to the General Accounting Office based on alleged solicitation impropriety is untimely when filed more than 10 working days after protester was notified of initial adverse agency action on agency-level protest.
3. Protest that awardee will be unable to furnish conforming product concerns contracting agency's affirmative responsibility determination which General Accounting Office does not review absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

DECISION

EG&G Pressure Science requests reconsideration of our dismissal of its protest concerning request for proposals (RFP) No. F41608-88-R-7087, issued by the Air Force for production of a fuel nozzle seal for the F-100 aircraft.

We deny the request for reconsideration.

By letter dated September 9, 1988, EG&G complained to the Air Force that the mechanical drawing for the fuel nozzle seal incorporated in the RFP did not contain sufficient information for manufacturing the part in accordance with performance specifications. By letter dated October 27, the Air Force asked EG&G to furnish further information supporting its position. By letter dated October 31, EG&G sent the Air Force copies of a company blueprint used in manufacturing the seal along with a detailed analysis.

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Air Force engineers subsequently evaluated EG&G's analysis and compared the EG&G blueprint with the RFP drawing. Despite EG&G's complaint, the Air Force determined that the RFP mechanical drawing did in fact contain adequate information to manufacture the fuel nozzle seal. By letter dated November 30, the Air Force informed EG&G of this finding.

The RFP closing date was May 10, 1989. On June 22, EG&G was orally informed that the Air Force had awarded the RFP to Koral Tool & Die Industries Inc.; EG&G later received a letter from the Air Force confirming the award on July 5. EG&G filed a protest with our Office on July 3, which we dismissed as untimely. EG&G now asks us to reconsider the dismissal, contending that since it filed the protest within 10 days of notification of the award by the Air Force, the protest is timely.

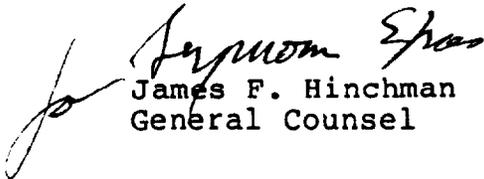
Our Bid Protest Regulations provide that protests such as EG&G's which are based upon alleged improprieties in a solicitation must be filed prior to the closing date for initial proposals. 4 C.F.R. § 21.2(a)(1) (1988); Riverside Research Institute, B-234844, Mar. 31, 1989, 89-1 CPD ¶ 340. Here, since EG&G did not file its protest until after award was made, it clearly is untimely.

Even if we construe EG&G's September 9 letter to the Air Force as an agency-level protest, the subsequent protest to our Office is still untimely. Under our regulations, if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 days of notification of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). In this case, the Navy issued such notification in its November 30 determination that the RFP mechanical drawing was adequate. Thus, to be timely, EG&G should have filed its protest at the latest within 10 working days of receiving the Air Force's November 30 determination that the specifications contained in the RFP's mechanical drawing were sufficient for manufacturing the seal. Since EG&G did not file its protest until 7 months later, after notification that the agency had awarded the contract, EG&G exceeded the 10-day limit.

Finally, to the extent that EG&G argues that the awardee will be unable to supply a conforming product, the protest concerns the Air Force's determination that the awardee is a responsible firm, a matter which we do not review absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5). Neither exception is applicable here. First, the protest does not

concern application of a definitive responsibility criterion. Further, to show bad faith, the protesting party must present undeniable proof that the procuring agency had a malicious and specific intent to injure the protesting party. System-Analytics Group, B-233051, Jan. 23, 1989, 89-1 CPD ¶ 57. We will not attribute unfair or prejudicial motives to the contracting agency on the basis of a protester's inference or supposition. Id. Here, we see no evidence in the record of bad faith by the agency; on the contrary, the Air Force thoroughly evaluated EG&G's complaint regarding the mechanical drawing in the RFP. While EG&G now challenges the Air Force's decision, EG&G's disagreement with the agency's technical judgment regarding the adequacy of the mechanical drawing in no way demonstrates that the agency acted in bad faith in reaching its decision.

The request for reconsideration is denied.


James F. Hinchman
General Counsel