



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Continental Development Corporation--
Reconsideration

File: B-236619.2

Date: October 13, 1989

DIGEST

1. Protest based on alleged solicitation improprieties which is not filed before the closing date for receipt of proposals is untimely and not for consideration on the merits.
2. General Accounting Office will not consider a protest under the significant issue exception to its timeliness rules where the protest does not raise an issue of first impression and is not of widespread interest to the procurement community.

DECISION

Continental Development Corporation (CDC) requests reconsideration of our dismissal of its protest concerning request for proposals (RFP) No. GS-09B-89240, issued by the General Services Administration (GSA) to lease commercial office space for the Environmental Protection Agency (EPA) in the San Francisco-Oakland Bay area. CDC challenges GSA's decision to evaluate moving costs and lump sum alterations costs over the full 20-year term of the base period and option periods, rather than over the base period alone.

We deny the request for reconsideration.

GSA issued the solicitation on February 10, 1989, for a base term of 5 years, with three successive 5-year renewal options. The solicitation provided that for evaluation purposes an offeror's price would be determined by adding various cost factors, such as moving costs and lump sum payments for alterations, to the price offered per square foot. Additionally, the IFB stated that "the base price from which adjustments are made will be the base price for the term of the lease, including any option periods;" thus,

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all cost adjustments were to be determined over a period of 20 years. Further, with regard to specific adjustment factors, the solicitation provided that the "annualized cost (over the full term)" for moving costs and lump sum payments would be added to calculate the evaluated prices.

Initial proposals under the solicitation were due on March 13, 1989. CDC first questioned the time period to be used in evaluating moving costs in a letter to the agency dated April 5, stating that the costs should be evaluated over the 5-year base period of the lease, not the full 20-year term including renewal options. By letter dated April 11, GSA confirmed that the full 20-year term would be used for evaluation purposes. CDC apparently raised the issue again in a telephone conversation with a contracting official on August 11. In response, by letter dated August 11, GSA again stated that the moving costs would be evaluated over the 20-year period. By letter dated August 15, received in our Office on August 18, CDC filed its protest, raising its challenge to the agency's decision regarding moving costs and, for the first time, arguing that lump sum payments for alterations similarly should be evaluated over the base period of the lease rather than the full 20-year term. We dismissed the protest as untimely.

In order to be timely, a protest based on alleged improprieties in a solicitation which are apparent from its face must be filed with the contracting agency or our Office prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1)(1989); Riverside Research Inst., B-234844, Mar. 31, 1989, 89-1 CPD ¶ 340. Here, it was clear from the solicitation that moving costs and lump sum payments would be evaluated on the basis of the full 20-year term of the lease. Accordingly, to be timely, CDC should have filed its protest on this issue before the closing date for initial proposals, March 13. Since the protest was not filed until August 18, it is untimely.

Even assuming, as CDC appears to argue, that the time period for evaluating the costs was not apparent from the face of the solicitation, CDC was on notice of the agency's decision at the latest when it received the agency's April 11 letter, which clearly stated that the full 20-year term of the lease would be used for evaluation purposes. Thus, at a minimum, CDC was required to file its protest before the closing date for receipt of best and final offers, August 15. 4 C.F.R. § 21.2(a)(1).

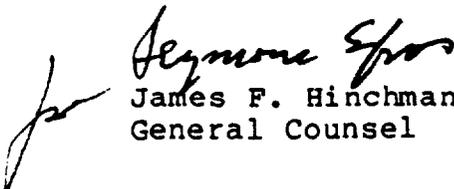
CDC argues that because its letter of protest was dated August 15, it was timely filed. We disagree. As defined by our Bid Protest Regulations, the term "filed" means the date

of actual receipt in our Office. 4 C.F.R. § 21.0(g); Mountain Technical Indus.--Request for Recon., B-235477.2, June 7, 1989, 89-1 CPD ¶ 533. In this case, although CDC's letter of protest was dated August 15, our time/date stamp shows we did not receive the protest in our Office until August 18, 1989. Because the date of actual receipt rather than the date of issuance is controlling, CDC's protest is untimely.

In its request for reconsideration, CDC argues that we should consider the protest under the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(b). We will only invoke the significant issue exception where the protest raises an issue of first impression or of widespread interest to the procurement community. Christoph's Research and Design Sys., Inc.--Recon., B-232966.2, Feb. 14, 1989, 89-1 CPD ¶ 151. CDC's protest does not qualify under either of these criteria. To the extent that CDC challenges GSA's choice of evaluation method, the protest raises an issue which we have considered in numerous cases. See e.g., System-Analytics Group, B-233051, Jan. 23, 1989, 89-1 CPD ¶ 57; TRS Design & Consulting Servs., B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168. Moreover, the specific issue raised--the term utilized in evaluating moving and alteration costs under a particular lease--while of interest to the protester, does not present an issue of widespread interest or importance to the procurement community.

In any event, even if we were to consider the protest on the merits, the protester has made no showing that GSA's treatment of moving costs and lump sum alteration costs was unreasonable, particularly in view of the broad discretion vested in GSA to enter into lease agreements. See 40 U.S.C. § 490(h)(1) (1982). Additionally, there is no evidence in the record to suggest that the agency's use of a 20-year base term either limited competition or prejudiced the protester in any way.

The request for reconsideration is denied.


James F. Hinchman
General Counsel