

K. Githooly



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Continental RPVs

File: B-236792.3

Date: November 2, 1989

DIGEST

1. Where a firm initially filed an agency-level protest requesting extension of at least 30 days in closing date for receipt of proposals, agency's receipt of proposals on closing date which was extended only 7 days constitutes initial adverse agency action; subsequent protest to the General Accounting Office (GAO), 4 months later, is untimely under GAO's Bid Protest Regulations.
2. Protest against alleged solicitation improprieties apparent prior to the closing date for receipt of proposals is untimely where filed after closing.

DECISION

Continental RPVs protests the award of a contract under request for proposals (RFP) No. N00164-89-R-0464, issued by the Naval Weapons Support Center, Crane, Indiana, for EXDRONE unmanned air vehicles. We dismiss the protest as untimely.

By letter dated May 25, 1989, Continental protested to the Navy that the RFP's closing date of June 8 should be extended at least 30 days. The Navy amended the RFP to extend the closing date to June 15. By letter dated September 29, Continental, which had not submitted a proposal, again protested to the Navy, alleging that the extension to June 15 had been insufficient to prepare a responsive proposal, that the initial delivery schedule was unrealistic, and that information provided at a pre-proposal conference indicated a contract would be awarded on a sole-source basis to the previous contractor. According to Continental, it had been prepared to submit a proposal despite indications that the previous contractor would receive award, but did not do so when it became obvious that dates for receipt of proposals and delivery would not be extended. Continental protested to our Office on

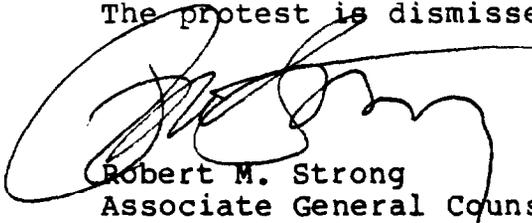
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October 16, realleging the grounds stated in its September 29 protest to the Navy.

Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely under our Bid Protest Regulations, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1989). "Adverse agency action" is defined in our Regulations to include the agency's proceeding with the receipt of proposals in the face of the protest. 4 C.F.R. § 21.0(f); Carlisle Tire and Rubber Co., B-235413.2, Aug. 18, 1989, 89-2 CPD ¶ 152. Thus, it is our general view that the procuring agency's receipt of proposals on a scheduled closing date without taking the requested corrective action in response to an agency-level protest puts the protester on notice that the contracting activity will not take the requested corrective action and begins the running of the 10-day limitation period. Zapata Gulf Marine Corp., B-235249, July 27, 1989, 89-2 CPD ¶ 85. Therefore, Continental's protest regarding the Navy's refusal to grant a 30-day extension in the closing date is untimely because it was filed more than 10 days after the agency proceeded with the rescheduled June 15 closing date notwithstanding Continental's May 25 protest.

Continental's protest allegations regarding the delivery schedule and the information dispensed at the pre-proposal conference are also untimely, because they concern alleged solicitation improprieties apparent prior to the closing date for receipt of initial proposals, which Continental failed to protest prior to closing. 4 C.F.R. § 21.2(a)(1); id.

The protest is dismissed.



Robert M. Strong
Associate General Counsel