

Gilhooly



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Hydro-Pure Systems Company--Request for Reconsideration
File: B-237362.2
Date: November 7, 1989

DIGEST

Dismissal of protest as untimely is affirmed where protest, although filed within 10 working days of protester's receipt of information pursuant to Freedom of Information Act request for information concerning the procurement, was filed more than 10 working days after the basis of protest was known.

DECISION

Hydro-Pure Systems Company requests reconsideration of our October 13, 1989, dismissal as untimely of its protest under step one of a two-step sealed bid procurement conducted by the Naval Facilities Engineering Command, Norfolk, Virginia, under request for technical proposals (RFTP) No. N62470-87-B-7218, for boiler feedwater demineralizer.

We affirm the dismissal.

Hydro-Pure protested that the Navy improperly determined that Reid Associates Inc. had submitted an acceptable step-one proposal. Hydro-Pure stated that it initially intended to use Reid as a subcontractor/installer, and first became aware that Reid was in competition against it when, on August 8, 1989, it received amendment No. 7 from the Navy identifying proposers who had submitted acceptable step-one proposals. Hydro-Pure alleged that Reid never submitted a step-one proposal itself, but rather was the subcontractor/installer for the only other company which had submitted a step-one proposal. According to Hydro-Pure, the Navy improperly allowed Reid to be substituted for the other company as a prime contractor. Hydro-Pure protested to the Navy by letter dated September 21. Hydro-Pure received the Navy's denial of its protest on October 2, and protested to our Office on October 10.

C47056/139969

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1989), if a protest has been filed initially with the contracting agency, in order for our Office to consider a subsequent protest, the initial protest must have been filed in accordance with our timeliness requirements. Section 21.2(a)(2) of our Regulations requires that a protest be filed not later than 10 working days after the basis of protest is known, or should have been known, whichever is earlier. Hydro-Pure was on notice of the basis of its protest on August 8 when it was advised by the Navy that Reid had submitted an acceptable step-one proposal. Since Hydro-Pure did not protest to the Navy until September 21, substantially more than 10 days later, its protest to the agency was untimely, and its subsequent protest to our Office properly was dismissed. See Boonton Elecs. Corp., B-233436, Jan. 27, 1989, 89-1 CPD ¶ 93.

In its request for reconsideration, Hydro-Pure argues that its protest was timely because the facts related to its protest were not "verified" until October 2, 1989, when it received information in response to a September 21 Freedom of Information Act (FOIA) request for information concerning the procurement. A protester's filing of a FOIA request does not toll our timeliness requirements, however, where, as here, the protest is based on information known to the protester prior to the filing of the request. Progressive Sheet Metal Co., Inc., B-232440, Sept. 13, 1988, 88-2 CPD ¶ 242.

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel