

D. LOAN QRP



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Palmetto Container Co.

File: B-237534

Date: November 8, 1989

DIGEST

1. Protest is untimely where protester knew the basis for its proposal's rejection on October 4, 1989, but did not protest the rejection until October 23, more than 10 working days later.
2. General Accounting Office will not review challenge to agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were misapplied. Bald, unsupported assertion of "bias" is insufficient to show bad faith.

DECISION

Palmetto Container Co. protests the award of any contract under request for proposals (RFP) No. DABT-47-89-R-0054, issued by the Department of the Army, Fort Jackson, South Carolina, for refuse collection in family housing areas at Fort Jackson.

We dismiss the protest.

Palmetto states that its proposal was rejected as unacceptable because its submission was found to be incomplete. Palmetto contends that it was improper to reject its low-priced proposal because Palmetto's failure to submit the required information was due to the Army's failure to furnish Palmetto the requisite forms with the solicitation, and there is no evidence that Palmetto does not intend to comply with the RFP requirements. Palmetto also asserts

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that the awardee is unable to provide the equipment required under the contract, and that the agency is biased against Palmetto because the contracting officer's staff is biased against the brother of Palmetto's owner.

The Army reports that on October 4, 1989, Palmetto was informed by telephone that its offer did not meet the minimum requirements of the RFP as it did not include a technical proposal or a detailed cost proposal as required by section L of the solicitation. Since Palmetto filed its protest on October 23, the Army requests that we dismiss its protest as untimely.

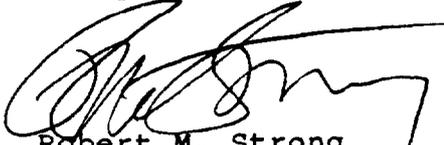
Under our Bid Protest Regulations, protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1989). Palmetto knew its basis of protest on October 4, 1989, when it was advised of the reason its proposal was rejected, but did not protest this rejection until 12 days later; therefore, this basis of protest is untimely.

Further where, as here, the protester questions the awardee's ability to perform the contract, the protester is challenging the agency's affirmative determination of responsibility. Since such a determination is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were misapplied. Creative Medical Management, Inc., B-236266.2, Aug. 15, 1989, 89-2 CPD ¶ 143.

In providing that there must be a "showing" of possible fraud or bad faith as a prerequisite to our review, our Regulations contemplate more than just a bald, unsupported assertion; facts must be presented in the protest that reasonably indicate that the government actions complained of were motivated by a specific and malicious intent to harm the protester. Vanguard Indus., Inc., B-233490.2, Dec. 21, 1988, 88-2 CPD ¶ 615. To the extent that Palmetto's allegation of "bias" relates to the Army's finding that the

awardee is responsible, Palmetto's unsupported assertion that there is bias by members of the agency's staff against the brother of Palmetto's owner does not meet this standard.

The protest is dismissed.



Robert M. Strong
Associate General Counsel