



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: East West Research, Inc. -- Request for
Reconsideration

File: B-236994.2

Date: November 22, 1989

DIGEST

1. Protest of alleged solicitation improprieties (defective specifications) is untimely where an agency-level protest was timely filed before the closing date for receipt of quotations, but where subsequent protest to the General Accounting Office was filed more than 10 working days after initial adverse agency action with respect the protest.

2. Protest of the agency's evaluation methodology that did not include particular specifications as part of the technical evaluation and that competition was restricted is untimely where not filed within 10 working days after the protester learns of the basis for protest.

DECISION

East West Research, Inc. requests reconsideration of our dismissal of its protest as untimely under request for quotations (RFQ) No. DLA400-89-T-D478, issued by the Defense Logistics Agency for an abrasive wheel.

We affirm our dismissal.

The RFQ was issued on March 18, 1989, and the closing date for receipt of quotations was April 8. By letter dated March 31 to the contracting officer, East West stated that the item description in the RFQ should include three specific standards of the American National Standard Institute (ANSI). East West specifically requested that the agency "correct," i.e., amend, the item description to include these three specific ANSI standards. Quotes were received on April 8; East West did not submit a quote. On July 17, the contracting officer verbally informed East West that the agency lacked sufficient technical data on the item to determine the requirements and to develop an item description in accordance with the ANSI standards for this

procurement. The contracting officer requested that East West provide technical data on the item which would then be evaluated for potential use in a future procurement. By letter dated August 2, the contracting officer confirmed her verbal response.

By letter dated August 7 to the contracting officer, East West protested that the agency had performed an incomplete technical evaluation because it failed to obtain the technical data necessary to amend the item description to include the ANSI standards which it had requested, and that as a result, East West was precluded from submitting a quotation. By letter dated August 8, the contracting officer denied East West's protest.^{1/} On September 18, the agency awarded the contract to Cascade Pacific International. On September 19, East West filed a protest with our Office essentially challenging the agency's failure to amend the item description in the RFQ to include the ANSI standards and the agency's failure to consider the ANSI standards during its technical evaluation, thereby resulting in restricted competition. On September 26, our Office dismissed East West's protest as untimely.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation, including an RFQ, which are apparent prior to the closing date, must be filed prior to the time set for receipt of quotations. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989); NPF Services, Inc., B-236841, Oct. 10, 1989, 89-2 CPD ¶ ; Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549. Furthermore, where a protest is initially filed with the contracting agency, a subsequent protest to our Office must be filed within 10 working days of the date the protester learns of initial adverse agency action on its agency-level protest. 4 C.F.R. § 21.2(a)(3).

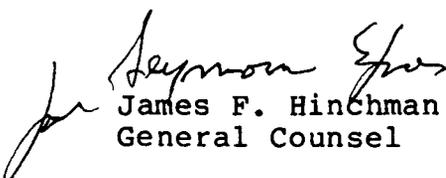
Here, the basis of East West's protest concerned alleged solicitation improprieties, i.e., defective specifications, apparent from the RFQ. In order for a protest by East West to be considered timely filed, it had to be filed before the time set for receipt of quotations on April 8. The only communication between East West and the agency by that date was East West's letter of March 31 to the contracting officer. If we assume that East West intended this letter as a timely agency-level protest of alleged solicitation improprieties, its subsequent protest to our Office was required to be filed within 10 working days following

^{1/} East West states that it never received the agency's letter denying its protest.

initial adverse agency action. For purposes of determining the timeliness of East West's protest to our Office, we view this initial adverse agency action as occurring on April 8, the closing date for receipt of quotations. See 4 C.F.R. § 21.0(f). Even if we give the protester the benefit of the doubt, adverse action clearly occurred on July 17, when the contracting officer informed East West that this RFQ's item description would not be amended to include the ANSI standards because the agency did not have sufficient technical data. However, East West did not file a subsequent protest with our Office until September 19, approximately 5 months after the closing date for receipt of quotations and 2 months after the contracting officer stated that the RFQ would not be amended. Therefore, because East West did not file its protest with our Office within 10 working days following initial adverse agency action, its protest was untimely.

To the extent that East West is challenging the agency's evaluation methodology because the ANSI standards were not considered during the technical evaluation, and that this agency action precluded the firm from submitting a quotation^{2/}, the protest also is untimely. East West knew on July 17 that the agency did not intend to evaluate the quotations in light of these ANSI standards. Our Bid Protest Regulations require that a protest on that basis be filed either with the contracting agency or our Office no later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Further, if a protest is initially filed with the contracting agency, our Office will consider a subsequent protest to our Office only if the initial protest to the agency was timely filed. 4 C.F.R. § 21.2(a)(3). Here, East West filed an agency-level protest by letter dated August 7, the 15th working day after learning of the basis for protest. Thus, its protest to the agency was untimely, and its subsequent protest to our Office therefore was also untimely.

Accordingly, our prior dismissal is affirmed.


James F. Hinchman
General Counsel

^{2/} The RFQ apparently did not contain a late quotation clause and thus quotation could have been received up to award.