

B. Coles



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

Decision

Matter of: Federal Computer Corp.--Reconsideration
File: B-239842.3
Date: October 17, 1990

Dale H. Coldren for the protester.
Fred Mack for Grid Systems Corporation, an interested party.
Vaughn E. Hill, Esq., Department of Labor, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Where the protester was in possession of a fact that would establish the timeliness of its protest to the General Accounting Office (GAO)--that is, that it had filed an earlier agency-level protest--but did not include this fact in its protest to GAO, dismissal of protest that was otherwise untimely on its face was proper.

DECISION

Federal Computer Corporation requests reconsideration of our dismissal as untimely of its protest challenging the rejection of its bid as nonresponsive under invitation for bids (IFB) No. D/L 89-17, issued by the Department of Labor for microcomputer workstations.

We affirm the prior dismissal.

The IFB, issued February 23, 1990, called for brand-name or equal products on a minimum/maximum quantity of 380/1200 workstations in five different configurations. The IFB contained the standard Federal Acquisition Regulation provisions setting forth the requirement that all "equal" items bid meet all of the salient characteristics listed in the solicitation and that it was the bidder's responsibility to furnish the descriptive literature necessary to determine that the "equal" items did meet the salient characteristics.

On May 2, the agency informed Federal Computer that it had rejected the firm's bid as nonresponsive because the items it offered failed to meet three of the salient characteristics in the IFB. Federal Computer filed a protest challenging the

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rejection of its bid with our Office on May 25. Federal Computer did not assert that its bid as submitted was responsive; rather, the protester contended that it mistakenly listed certain model numbers in the bid when in fact it intended to offer certain other models which were referenced in descriptive literature submitted with the bid.

Based on Federal Computer's initial submission, we dismissed the protest as untimely because while Federal Computer had been informed of its basis of protest on May 2, the firm did not file a protest with our Office until May 25. Our Bid Protest Regulations require that protests like Federal Computer's be filed within 10 working days after the basis of the protest is known. 4 C.F.R. § 21.2(a)(2) (1990).

Federal Computer then filed a request for reconsideration, advising us for the first time that it had filed an agency-level protest on May 18, and arguing that its subsequent protest to our Office was therefore timely.^{1/}

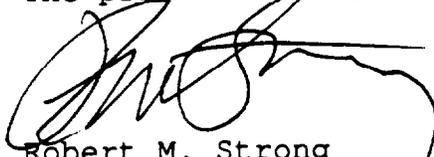
A protester has the obligation to provide information establishing the timeliness of the protest when on its face the protest otherwise appears untimely. Hannibal Constr., Inc.--Request for Recon., B-237679.2, Mar. 19, 1990, 90-1 CPD ¶ 303. In other words, when a protest appears untimely on its face, a protester who is in possession of facts that would establish its timeliness, but who does not initially provide these facts to our Office, runs the risk of dismissal and of our refusal to reconsider the matter when the protester subsequently presents these facts. Rudd Constr., Inc.--Second Request for Recon., B-234936.3, July 28, 1989, 89-2 CPD ¶ 88.

Here we are presented with just such a situation. Federal Computer's protest was on its face untimely, since it did not mention its previously filed agency-level protest. Therefore, since Federal Computer was obligated to furnish a detailed statement of factual and legal grounds available to the protester when the initial protest was filed, 4 C.F.R. § 21.1(b)(4), Federal Computer assumed the risk that its protest would be dismissed.

^{1/} Federal Computer initially filed a request for reconsideration on June 7, which we dismissed after being advised that another bidder had filed a protest concerning the same procurement with the General Services Board of Contract Appeals (GSBCA). The GSBCA subsequently dismissed that protest without reaching the merits, and Federal Computer then resubmitted to our Office on July 18 its request for reconsideration of our original dismissal of its protest.

In any event, we see no basis to object to Labor's rejection of the protester's bid as nonresponsive. While Federal Computer argues that it specified the wrong model numbers in its bid and really meant to identify other models also referenced in its descriptive literature, Federal Computer in fact offered models which it concedes do not conform to the material requirements of the solicitation. Federal Computer cannot now make its bid responsive by claiming it made clerical errors in its model references; such post-bid opening explanations may not be accepted to make a bid, which was clearly nonresponsive, responsive. See BMSI, Inc., B-237402, Nov. 2, 1989, 89-2 CPD ¶ 418; Harnischfeger Corp., B-220036, Dec. 19, 1985, 85-2 CPD ¶ 689.

The prior dismissal is affirmed.



Robert M. Strong
Associate General Counsel