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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Single Screw Compressor, Inc.

File: B-244607

Date: August 15, 1991

Thomas W. Winland, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner, for the protester.
Lawrence M. Ross, Esq., Hurwitz and Fine, P.C., for Aurora Technology Corporation, and F.W. Conroy, for Dresser-Rand, interested parties.

Jonathan H. Kosarin, Esq., Department of the Navy, for the agency.

David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against terms of proposed sole-source solicitation filed with General Accounting Office (GAO) 11 working days after receipt of denial of initial, agency-level protest (and 13 minutes after closing time for receipt of proposals) is untimely; under GAO Bid Protest Regulations, where initial protest is filed with the contracting agency, subsequent protest to GAO must be filed within 10 working days of initial adverse agency action.

DECISION

Single Screw Compressor, Inc. (SSCI) protests the terms of request for proposals (RFP) No. N61533-91-R-0071, issued by the Department of the Navy on a sole-source basis to Aurora Technology Corporation for the development of a prototype high-pressure rotary air compressor based upon Aurora's Cylindrical Orthogonal Cylindrical Arrangement (COCA) concept.

We dismiss the protest.

Although the Navy stated in a Commerce Business Daily notice that it intended to place a sole-source contract with Aurora, it also stated that it would consider proposals submitted by other potential sources if received by 3 p.m. on June 26, 1991. SSCI did not submit a proposal. In its protest, SSCI argues that the solicitation contained insufficient information concerning the COCA concept to enable it to prepare a competitive proposal and that insufficient time was

allowed for offerors to respond. SSCI concludes that the proposed sole-source award is improper because SSCI, as well as other firms, can perform the required services.

The protest is untimely. In a June 11 letter to the agency, SSCI indicated that it needed more information regarding the COCA concept, stating that:

". . . [t]he solicitation does not permit us to bid as it lacks adequate information and we feel that it does not constitute a bona fide competition. . . . We presume that you will naturally extend the required submission time by several weeks to permit serious responses."

SSCI did not indicate that the letter was intended as a protest, but we generally will consider such expressions of dissatisfaction to constitute agency-level protests where they also request agency action. See Lawrence Realty, B-243063, Mar. 5, 1991, 91-1 CPD ¶ 251 (letter to agency expressing dissatisfaction with agency action and requesting alternate action constitutes agency-level protest even where it does not state it was intended as a protest).

The agency rejected SSCI's position in a letter dated June 11, which was received at SSCI by telefax on the same day. The letter stated that:

"[T]he Statement of Work set forth in Section C of the solicitation fully describes all the information the David Taylor Research Center has with regards to the description and design of a [compressor] based on the 'COCA' concept Due to Government schedules, we are unable to extend the due date. . . ."

SSCI's subsequent protest to our Office challenging the proposed sole-source award based on the inadequacy of the specification, and stating that SSCI could not compete absent further information on the COCA concept, was filed at 3:13 p.m. on June 26.

Our Bid Protest Regulations provide that where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of initial adverse agency action on that protest. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(3)); Lawrence Realty, B-243063, supra. SSCI's June 26 protest to our Office was filed 11 working days after its receipt of the agency's denial of its agency-level protest. The protest therefore is untimely.

SSCI's protest submission suggests that SSCI did not consider its June 11 letter to the agency to be an agency-level

protest. Rather, SSCI apparently viewed its protest as timely because it was being filed prior to the closing time. In this regard, SSCI states in its protest letter that:

"This protest is timely filed pursuant to 4 C.F.R. § 21.2(a)(1). The protest is based in part on an impropriety apparent in the solicitation. The closing date for submission of bids is June 26, 1991, and bids therefore have not yet been opened."

SSCI correctly cites the requirement under our Regulations that protests based upon alleged apparent solicitation improprieties be filed prior to the closing time. Bid Protest Regulation, 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.2(a)(1)). However, SSCI's protest was not received prior to the closing time. While SSCI apparently intended to protest prior to the closing time, and the protest indeed was handcarried to and received (filed) in our Office on the closing date, it was not received prior to the closing time of 3 p.m.; rather, as indicated by our time/date stamp on the letter, it was received at 3:13 on June 26. Because the protest was not received prior to the time set for receipt of proposals, it is untimely as to the propriety of the proposed sole-source award and, more specifically, as to the argument that the specifications were inadequate to permit competition. See Mead Data Central, B-242598, Mar. 26, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 330 (protest of solicitation was untimely where filed about 1 minute after closing time); 120 Church St. Assocs.--Recon., B-232139.4, May 23, 1989, 89-1 CPD ¶ 490 (solicitation protest untimely where filed 3 minutes after closing time).

The protest is dismissed.



John M. Melody
Assistant General Counsel