



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Scheduled Airlines Traffic Offices, Inc.

File: B-244852

Date: October 24, 1991

Josephine L. Ursini, Esq., for the protester, Michelle Harrell, Esq., and Robert C. MacKichan, Jr., Esq., General Services Administration, for the agency. Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's alleged modification of awardee's contract, as being outside the scope of the contract, is dismissed as untimely where protest, brought by firm which competed under the solicitation for that contract, was not filed within 10 working days of protester's receipt of written notification of agency's intention to have awardee perform the additional travel services under its current contract. Further, protester did not diligently pursue its basis of protest since it waited nearly 2 months to secure additional information and confirmation from the agency regarding the stated intended action--during which time protester had no reason to believe agency would reconsider its determination.

DECISION

Scheduled Airlines Traffic Offices, Inc. (SatoTravel) protests the General Services Administration's (GSA) alleged modification to Balboa Travel Incorporated's contract (No. GS-09F-80274), which was awarded in 1989, for the operation of commercial Travel Management Centers (TMC) to meet the travel service requirements of federal agencies located in Alameda County, California. SatoTravel, which had been providing travel services to the Coast Guard at Coast Guard Island in Alameda County, challenges GSA's determination to include the Coast Guard's travel service requirements in Balboa's current county-wide contract.

We dismiss the protest.

On May 2, 1991, the Coast Guard sent notification to the protester of that agency's requirement to use "GSA contracted travel agencies," and that the memorandum of understanding (MOU) under which the protester was providing travel services to the Coast Guard was terminated, effective 90 days from SatoTravel's receipt of that notice. That letter also stated that Coast Guard's legal counsel had determined that the MOU should have been terminated in 1986. By letter of May 13, the commanding officer at Coast Guard Island informed the protester that the Coast Guard "has been directed by the Department of Transportation [(DOT)] and the General Services Administration (GSA) to use only the GSA . . . TMC" for its required travel services. The May 13 letter instructed the protester that "in 90 days from the date of this letter the [SatoTravel] operation [servicing the Coast Guard in Alameda County] must be terminated."

On June 12, SatoTravel sent a letter to the Coast Guard in response to these two letters in which the protester sought clarification "as to whether [it is] being required to vacate the Alameda Coast Guard locations as of August 11, 1991." In its June 12 letter, SatoTravel states its opinion that the "unexpected" addition of the Coast Guard's travel requirements to Balboa's contract would be a "windfall" to that firm since, as it had discussed with the Coast Guard "several weeks ago, a review of Balboa's contract indicates that neither Balboa nor GSA ever intended to include Coast Guard Island travel within the scope of the contract." The protester's letter stated that, based upon SatoTravel's knowledge of the Coast Guard's requirements, the solicitation and the resulting contract, the travel requirements of Coast Guard Island were not included in the RFP's estimated air ticket volume for the anticipated 35 agencies to be serviced under the contract. Lastly, the protester's letter of June 12, stated that "it appears to be appropriate for GSA to issue a separate Solicitation to provide travel services for Coast Guard Island."

SatoTravel explains that its letter of June 12, to the Coast Guard was not a protest, but rather the firm was seeking clarification of the terms of the Coast Guard's termination of the protester's travel services. SatoTravel explains that it was trying to encourage the Coast Guard to seek a possible waiver of the requirement to use GSA's TMC contractor, and to issue (or have GSA issue) a separate solicitation to meet the Coast Guard's travel service requirements. On June 21, the Coast Guard in Alameda County transmitted an informal request to DOT to seek a waiver from GSA of the requirement to use the current regional TMC contractor. On July 17, SatoTravel called GSA and allegedly was told of GSA's decision to modify Balboa's contract to include the

Coast Guard's travel service requirements.¹ On July 18, the protester was informed that the Coast Guard was seeking a waiver to enable SatoTravel to continue servicing the Coast Guard in Alameda County, at least, as stated in the Coast Guard's memorandum of June 21, "until GSA specifically solicits Coast Guard input for future TMC contracts."

SatoTravel filed its protest with our Office on July 19, contending that the solicitation--request for proposals (RFP) No. 9-FBG-OLE-A-A0929/89--for the TMC services which resulted in award to Balboa in 1989 did not contemplate the provision of travel services to the Coast Guard. In this regard, the protester states that the RFP (which did not list all mandatory user agencies) failed to state that the Coast Guard was a mandatory user of the awardee's services and that the RFP's estimates (which were allegedly based on historical information and a survey of anticipated user agencies) did not reflect the Coast Guard's estimated travel requirements. The protester contends that any modification to Balboa's contract to include these Coast Guard services, or a determination that Balboa's contract already includes a requirement to provide travel services to the Coast Guard, is improper since such requirement is outside the scope of the awarded contract.

GSA seeks dismissal of the protest as untimely, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991), because it was not filed within 10 working days of when SatoTravel first learned of, or should have known, its basis of protest. In this regard, the agency states that SatoTravel "was on notice as of May 1991 that its 1986 MOU with the Coast Guard was terminated and that both GSA and DOT had determined that the Coast Guard was a mandatory user of the GSA TMC contracts . . . [and] that the Government intended to fulfill the Coast Guard's Alameda requirements through the Balboa contract." The agency further contends that SatoTravel admits to such knowledge since it raised its concerns in its June 12 letter to the Coast Guard.

The protester states that its protest is timely because it was filed within 10 working days of its July 17 telephone conversation with GSA in which it learned "of what appears to be a final determination that Balboa's Alameda contract would be or has been modified to include the Coast Guard's

¹GSA refutes this allegation and states that SatoTravel was not told during this July 17 telephone conversation that a modification to Balboa's contract was contemplated. GSA contends that the Coast Guard's travel service requirements were intended to be, and in fact are, included in Balboa's existing contract, so that no modification of that contract is necessary.

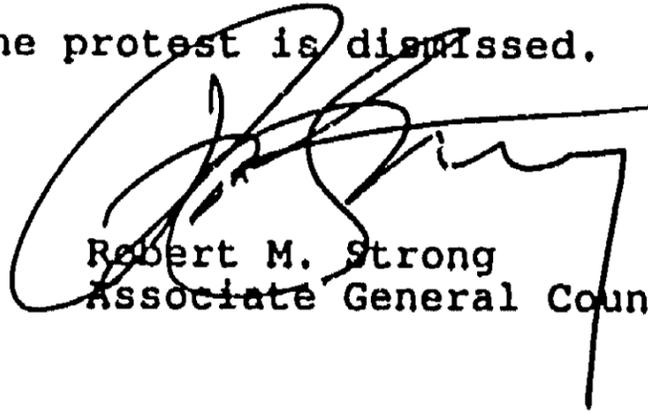
requirements." SatoTravel does not challenge the Coast Guard's termination of its MOU and states that "there was nothing to 'protest' in May 1991." At that time, the protester instead attempted to convince the Coast Guard and DOT to seek a waiver of the requirement to use Balboa, the current TMC contractor, and to issue a separate solicitation to provide travel services to the Coast Guard.

SatoTravel's protest that GSA improperly included (by contract modification or otherwise) the Coast Guard's travel service requirements within Balboa's TMC contract for Alameda County is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), a protest based on other than an apparent solicitation impropriety must be filed within 10 working days after the protester knew or should have known the protest basis. Here, SatoTravel was informed by the Coast Guard's letters of May 2 and May 13 that its MOU was terminated and that GSA requires that the Coast Guard use GSA's regional TMC contractor for its travel service requirements. The protester filed its July 19 protest nearly 2 months after receiving notification of GSA's intention to have the Alameda County TMC contractor (i.e., Balboa) perform the Coast Guard's travel service requirements under its current contract. Although the protester claims that it did not have anything to protest until it called GSA in mid-July and learned of the agency's alleged "final determination" to include the Coast Guard's requirements in Balboa's TMC contract, the record shows that the protester was told of GSA's determination nearly 2 months earlier when concrete action--notice of the termination of SatoTravel's agreement--was taken, and that the protester had no reason to believe during that time that GSA's decision would be reconsidered. Thus, we have no reason to consider, as the protester suggests in its efforts to establish the timeliness of its protest, the information obtained from GSA on July 17 to be the agency's final determination of the requirement.

Instead of filing a protest with GSA or our Office within 10 working days of its knowledge of its basis of protest, the protester elected to pursue the matter with the Coast Guard (and DOT) by encouraging the pursuit of a waiver from the requirement or the issuance of a separate solicitation. Such efforts, however, do not toll our timeliness rules. See generally Allied-Signal, Inc., B-243555, May 14, 1991, 91-1 CPD ¶ 468; aff'd Allied-Signal, Inc.--Recon., B-243555.2, July 3, 1991, 91-2 CPD ¶ 19. Furthermore, the protester, which competed under the RFP, and thus admittedly, had knowledge of the terms of Balboa's contract and whether the Coast Guard's requirements were included in that contract, did not diligently pursue its basis of protest since it waited nearly 2 months after being told of GSA's

determination to include the Coast Guard's travel requirements in Balboa's current contract to secure additional information and confirmation from the agency. See Herman Miller, Inc., B-237550, Nov. 7, 1989, 89-2 CPD ¶ 445.

The protest is dismissed.

A large, stylized handwritten signature in black ink, appearing to read 'R. M. Strong', is written over the typed name and title.

Robert M. Strong
Associate General Counsel