



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ferguson Surveying and Engineering

File: B-244570.2

Date: November 8, 1991

Douglas M. Ferguson for the protester.
Glenn G. Wolcott, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of contract award on the basis that awardee's price was "ridiculously low" is dismissed since an allegation that an awardee submitted an unreasonably low price does not form a valid basis for protest; allegation that protester has more experience than the awardee is untimely because protester waited more than 10 working days after being notified that another offeror had been selected as the highest rated proposer before filing protest.

DECISION

Ferguson Surveying and Engineering protests the award of a contract to RES Land Surveys, Inc. The contract was awarded pursuant to solicitation No. 16-91-64, issued by the United States Department of Agriculture, Forest Service, for land surveying services to be performed in the Wallowa-Whitman National Forest. Ferguson protests that its offer should have been selected over RES's because Ferguson has greater experience in performing surveys in the geographic area where this contract is to be performed, and also contends that RES's offer should have been rejected because its price is "ridiculously low."

We dismiss the protest.

A protester's claim that another offeror has submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the

solicitation have been misapplied. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Where, as here, there is no such showing, we have no basis to review the protest.

To the extent Ferguson is alleging that it should have been rated superior to RES because of Ferguson's greater experience, the protest is untimely filed. Ferguson states that it received a letter from the agency notifying Ferguson that RES had been selected as the top proposer on August 15, 1991, but "held off" submitting its protest until after it subsequently received an "official" notification that RES had received the award.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for the protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Here, Ferguson received notice on August 15 that RES had been selected as the highest rated proposer. Thus, Ferguson was made aware of this basis of protest on August 15, and the subsequent official award notice was of no consequence. University Plaza Co-Tenancy, B-233572.2, Dec. 29, 1988, 88-2 CPD ¶ 641. Accordingly, Ferguson's protest filed (received) in our Office on September 5, 14 working days after the August 15 notification, is untimely.

The protest is dismissed.



Paul I. Lieberman
Assistant General Counsel