



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

Decision

Matter of: Tucson Mobilephone, Inc.--Reconsideration
File: B-247055.3
Date: February 6, 1992

Theodore M. Bailey, Esq., for the protester, Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision dismissing protest is affirmed where reexamination of record shows that General Accounting Office's conclusion as to piecemeal nature of protest was in error, but also establishes that protest was untimely filed.

DECISION

Tucson Mobilephone, Inc. (TMI) requests reconsideration of our decision, Tucson Mobilephone, Inc., B-247055, Jan. 7, 1992, 92-1 CPD ¶ ____, in which we dismissed its protest of invitation for bids (IFB) F28609-91-B-A033, issued by the Department of the Air Force for maintenance and repair of land mobile radio equipment at McGuire Air Force Base (AFB), New Jersey.

We affirm the dismissal.

TMI's protest followed two agency-level protests, dated September 6 and November 14, 1991. In the September 6 protest, TMI requested that the agency provide bidders with specific model numbers and quantities of each model to be serviced under the contract. In response to the protest, the agency revised the solicitation on October 16 to include an equipment list. However, the list did not include model numbers. TMI's November 14 protest to the agency requested this information, but also specifically asked that the quantities and model numbers of equipment be included in the bid schedule, in the form of a separate line item for each model, instead of in a separate list. On December 4, the agency sent a letter to TMI stating that it would not amend the bid schedule; however, the IFB was amended to include a detailed equipment list containing quantities and model numbers. After failing at a subsequent appeal to the agency's competition advocate for a revised bid schedule, TMI filed its protest in our Office.

We dismissed TMI's protest, finding that the agency properly had remedied TMI's September 6 agency-level protest concerning the absence of quantity and model numbers in the IFB by issuing an equipment list containing the requested information. As to its November 14 agency-level protest alleging that the equipment list did not correct the problem and that the bid schedule should have been changed to request separate prices for each model of equipment, we noted that TMI's September 6 protest did not request any changes to the bid schedule itself, but only asked the agency to identify specific model numbers. As there was no apparent reason why TMI could not have raised this issue when it filed its first protest with the agency on September 6, we concluded that TMI's later-raised allegation amounted to an impermissible piecemeal protest. See Source AV Inc., B-244755.2; B-244755.3, Sept. 10, 1991, 91-2 CPD ¶ 237; Marine Indus., Ltd., B-225722.3, July 10, 1987, 87-2 CPD ¶ 30.

In its reconsideration request, TMI contends that our decision was based on a "misunderstanding" of the events at the agency level. TMI asserts that its initial protest on September 6 in fact did request changes to the bid schedule, and the November 14 protest to the agency merely repeated the request. We have reexamined TMI's September 6 protest and find that TMI is correct. Although the September 6 agency protest primarily requested that specific model number and quantity information be provided to bidders in order to reduce uncertainty and minimize the incumbent's competitive advantage, it also requested that section B (the bid schedule) be modified to include quantities and model numbers.¹

Notwithstanding our erroneous conclusion, however, dismissal of TMI's protest was proper, as the record now shows that it was untimely filed. Where a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. See 4 C.F.R. § 21.2(a)(3) (1991); Bauer Compressors, Inc., B-244580, July 2, 1991, 91-2 CPD ¶ 16. Here, the October 16 amendment to the IFB constituted initial adverse agency action on TMI's September 6 protest because it responded to the protest with an equipment list instead of a revised bid schedule. Accordingly, the 10 working day filing period began to run when TMI received

¹Our decision also found that another of TMI's protest issues--whether certain line items represented recurring or nonrecurring monthly maintenance--was raised in a piecemeal manner. As TMI does not challenge our conclusion with respect to that issue, we will not reconsider it.

the October 16 amendment. TMI's continued pursuit of the matter with the contracting officer and the agency's competition advocate did not toll our timeliness requirements; once informed of the initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. Bauer Compressors, Inc., supra. Since TMI's protest of the bid schedule was not filed in our Office until December 19, that protest was untimely.

Furthermore, as we noted in our prior decision, TMI's insistence that the bid schedule be revised to reflect monthly prices instead of per-service prices apparently is based on its view that a firm, fixed-price contract should be awarded instead of a requirements-type contract, but TMI has offered no reasons why a requirements-type contract is not appropriate here. We therefore would have no basis to question the agency's choice of contract type. See Bombardier, Inc., Canadair, Challenger Div., B-244328, June 17, 1991, 91-1 CPD ¶ 575 (protest that did not challenge solicitation requirements with specificity did not furnish basis to question agency's determination of its minimum needs).

The dismissal is affirmed.


Ronald Berger
Associate General Counsel