



Comptroller General
of the United States

Washington, D.C. 20548

Lebowitz
145868

Decision

Matter of: Westinghouse Electric Corporation

File: B-246658.2

Date: February 11, 1992

Marsha Goodman for the protester.
David E. Weiskopf, Esq., Administrative Office of the United States Courts, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed 3 months after award challenging the evaluation of the protester's quotation and the issuance of delivery orders to another contractor is dismissed as untimely where the protester did not diligently pursue the information forming its basis of protest as the protester waited 2 months to file a Freedom of Information Act request after being notified that it was not selected for award and after receiving no information from the agency in response to its informal inquiries.

DECISION

Westinghouse Electric Corporation protests the issuance of delivery orders to Teknion, Inc. under request for quotations (RFQ) No. 91-3111-40, issued by the United States Bankruptcy Court, Chicago, Illinois, for systems furniture. The protester, which submitted the lowest quotation, contends that its furniture meets the agency's minimum needs and that the agency improperly made award to Teknion.

We dismiss the protest.

The RFQ was issued on July 12, 1991, to vendors with mandatory, multiple-award Federal Supply Schedule contracts with the General Services Administration for systems furniture. Five vendors, including the protester and Teknion, submitted quotations by the closing time for receipt of quotations on August 12. On September 23 and 27, the agency issued delivery orders to Teknion, the low-priced vendor meeting its needs. By letter of September 23, the agency informed the protester that it was not selected for award.

The protester states that upon receiving the agency's September 23 letter, it "contacted the agency (by phone) seeking further information," although none was provided. On November 27, after again calling the agency, the protester filed a Freedom of Information Act (FOIA) request for a copy of the quotation abstract and the awardee's bill of materials. By letter dated December 13, the agency notified the protester of a protest filed with our Office by Haworth, Inc., another vendor under the RFQ. The protester states that it received the agency's letter, including a copy of Haworth's protest and the quotation abstract, on December 27. On January 8, 1992, on the basis of the quotation abstract provided with the copy of Haworth's protest, the protester filed this protest contending that its quotation was not properly evaluated and as the vendor submitting the lowest quotation, it should have received the award.

The agency argues that this protest, filed more than 3 months after award, should be dismissed as untimely because the protester did not diligently pursue its basis of protest following receipt of the agency's letter of September 23, 1991, advising the protester that it was not selected for award. The protester argues that it timely submitted its protest within 10 working days of receiving from the agency the quotation abstract accompanying the copy of Haworth's protest.

Our Bid Protest Regulations require that protests be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Protesters have a duty to diligently pursue information that reasonably would be expected to reveal whether a basis for protest exists. Delaware Eastwind, Inc., B-228533, Nov. 18, 1987, 87-2 CPD ¶ 494. Where the protester has not diligently or expeditiously pursued the information that forms the basis for its protest, we will not view the protest as timely filed. Illumination Control Sys., Inc., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546.

Here, while the protester states that on two occasions it informally contacted the agency after learning that it had not been selected for award, the protester has provided no details or correspondence in support of its requests for information. It also appears that the protester waited a full month between calls to the agency. Under these circumstances, the protester's subsequent filing of its FOIA request, a copy of which was included with its protest, 2 months after being notified that it was not selected for award and after receiving no information from the agency in response to its informal inquiries is not consistent with the requirement that a protester diligently and

expeditiously pursue information which would form its basis of protest. Although the protester filed its protest within 10 working days after it received a quotation abstract (which was not released in response to its FOIA request but rather as part of the agency's notification that another vendor had filed a protest with our Office), the protester did not diligently pursue the information forming its basis of protest and therefore its protest filed 3 months after award is untimely.

We will not consider this protest pursuant to the significant issue exception to our timeliness rules, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.2(c)). Under this exception, we may consider a given case notwithstanding its untimeliness when, in our judgment, the circumstances are such that our consideration of the protest would be in the interest of the procurement system. ABB Lummus Crest Inc., B-244440, Sept. 16, 1991, 91-2 CPD ¶ 252. The exception is limited to protests that raise issues of widespread interest to the procurement community, and which have not been considered on the merits in a previous decision. Id. Here, the matter generally has been addressed in previous cases, see, e.g., Westinghouse Furniture Sys., B-241647 et al., Feb. 7, 1991, 91-1 CPD ¶ 141; American Body Armor & Equip., Inc., B-238860, July 3, 1990, 90-2 CPD ¶ 4, and is not of widespread interest to the procurement community.

Accordingly, the protest is dismissed.



Michael R. Golden
Assistant General Counsel