

FORMICA



Comptroller General
of the United States

Washington, D.C. 20548

Decision

AB 11110

Matter of: Dragon Services, Inc.

File: B-245858.3

Date: April 14, 1992

DECISION

Dragon Services, Inc. protests the award of a contract to ConStar, L.P., under request for proposals (RFP) No. DAKF40-91-R-0001, issued by the Department of the Army for post-wide food services at Fort Bragg, North Carolina. Dragon, the incumbent contractor, alleges that ConStar improperly obtained confidential and proprietary information pertaining to Dragon, which "could have given ConStar an unfair advantage in the preparation of its bid."

We dismiss the protest.

Dragon received a notice of the agency's intention to award the contract to ConStar on February 21, 1991. On February 26, Dragon filed an agency-level protest of the award, contending that ConStar obtained confidential and proprietary information relating to Dragon's performance on the predecessor contract. This contention was based on the alleged activities of two of Dragon's former employees, and was supported by five affidavits all dated February 24, 1992.

The agency informed Dragon by decision dated March 5, that its protest was untimely and would not be considered on the merits since it was not filed within 10 working days of when Dragon knew or should have known of its basis for protest. The agency asserted that the activities on which Dragon's contention was based occurred between January and May 1991, and Dragon either knew or should have known of these activities "for many months."

Dragon filed its protest with our Office on March 12, again contending that ConStar improperly obtained confidential and proprietary information relating to Dragon's performance on the predecessor contract. Dragon argues that the agency's dismissal of its protest as untimely was erroneous, because it was not until February 24, 1992, when Dragon obtained "[t]he crucial piece in the puzzle"--the affidavit of an

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individual employed by Dragon as a night baker describing an event which allegedly occurred "[s]ometime between January and March of 1991"--that Dragon "had a sufficient factual basis to file a protest."

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based on 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 protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Our Regulations further provide that a matter initially protested to the agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

Here, even accepting as accurate the protester's claim that without the information contained in the night baker's affidavit it did not have sufficient factual information on which to base its protest, the protest is untimely. Based on another affidavit submitted by Dragon in support of its protest, it is clear that the night baker had related the information contained in its February 24 affidavit to an investigator employed by Dragon during an interview conducted August 29, 1991. Because this information--which according to Dragon was "[t]he crucial piece in the puzzle"--was provided to Dragon on August 29, 1991, its agency-level protest based on this information should have been filed within 10 working days of that date. As Dragon's initial protest to the agency was not filed until after award, on February 26, 1992--6 months after Dragon by its own admission knew of its basis of protest--its subsequent protest to our Office is untimely.

Dragon requests in the alternative that we consider its protest pursuant to the exception in our timeliness rules for protests that raise significant issues. Contrary to the protester's assertion that our Office "often hears untimely protests," the significant issue exception is strictly construed and sparingly used to prevent the timeliness rules from becoming meaningless. We will invoke it where a protest raises issues of widespread interest to the procurement community which have not been considered on the merits by this Office in a previous decision. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. The issue raised here by Dragon has generally been addressed in previous decisions, see, e.g., Dataproducts New England, Inc. et al., B-246149.3 et al., Feb. 26, 1992, 92-1 CPD ¶ 231; DTM Inc., B-241270.2, Feb. 15, 1991, 91-1 CPD ¶ 178

(allegations that competitor may have improperly obtained proprietary information of another firm through former employees), and is not of widespread interest to the procurement community.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel