

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

Decision

Matter of: J. Rax Garbage Disposal Service, Inc.--
Reconsideration

File: S-251442.2

Date: January 15, 1993

Jimmie Rax, Sr., for the protester.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Dismissal of protest is affirmed where protest based upon
alleged impropriety apparent on the face of the solicitation
was not filed until well after the bid opening date, making
it untimely; a protester is on constructive notice of Bid
Protest Regulations concerning the proper time for filing a
protest.

DECISION

J. Rax Garbage Disposal Service, Inc. requests reconsidera-
tion of our December 7, 1992 dismissal of its protest of the
award of a contract under invitation for bids (IFB) No. 265-
0009, issued by the Department of Justice for garbage
disposal services at two federal detention facilities in
Oakdale, Louisiana.

We affirm the dismissal.

In its protest, J. Rax alleged that the agency led it to
believe that it would receive a contract under the 8(a)
program to provide the services called for under the IFB.¹
Consequently, J. Rax argued that the agency should not have
issued a competitive solicitation, but instead should have
placed the procurement under the 8(a) program for award to
J. Rax. The IFB was issued on August 12, 1992; the

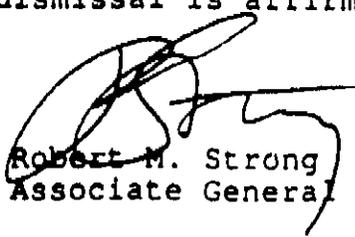
¹Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)
(1988), authorizes the Small Business Administration to
enter into contracts with government agencies and to arrange
for the performance of such contracts by letting subcon-
tracts to socially and economically disadvantaged small
business concerns.

protester submitted a bid by the September 16 bid opening date, but was not the low bidder. The contract was awarded to Omega I Company on November 20, and J. Rax filed its protest in our Office on November 25.

Under our Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of a solicitation must be filed by the time designated for bid opening. 4 C.F.R. § 21.2(a)(1) (1992). Since it was clear from the agency's decision to issue the IFB that an 8(a) award would not be made to J. Rax, to be timely the protester should have filed its protest by the bid opening date, September 16. As this protest was not filed until November 25, more than 2 months later, we found it untimely and dismissed it.

J. Rax contends that it did not file its protest prior to award because it believed a protest could be made only after award. The protester bases this contention on the IFB's inclusion of Federal Acquisition Regulation (FAR) § 52.233-3, titled "Protest After Award," and on information allegedly provided by an agency employee. However, FAR § 52.233-3 merely refers to the procedures which the agency must follow should a protest be filed after award; its inclusion in the IFB has no bearing on the requirement that a protest challenging an alleged solicitation impropriety, like the one here, be filed before award. Further, protester is on constructive notice of our regulations concerning the proper time for filing a protest, even where allegedly erroneous information is provided by agency personnel, as our Bid Protest Regulations are published in the Federal Register and the Code of Federal Regulations. Whelen Eng'g Co., B-239189, Aug. 1, 1990, 90-2 CPD ¶ 89. Accordingly, the protester's erroneous belief regarding the time for filing did not relieve it of the obligation to file the protest before bid opening. Since it was not filed until after award was made, the protest was untimely.

The dismissal is affirmed.


Robert M. Strong
Associate General Counsel