



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

## Decision

**Matter of:** S & C Construction Company  
**File:** B-252545  
**Date:** April 7, 1993

John C. Goodson, Esq., Keil & Goodson, for the protester, Vera Meza, Esq., and Richard A. Couch, Esq., Department of the Army, for the agency. Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest of cancellation of solicitation is dismissed as untimely where not filed within 10 working days after protester knew or should have known basis for protest.

### DECISION

S & C Construction Company protests the cancellation of invitation for bids (IFB) No. DAAC79-92-B-0067, issued by the Department of the Army for light fixture maintenance and relamping services for the Red River Army Depot.

We dismiss the protest.

The original IFB was issued on June 9, 1992. The bid schedule listed multiple line items describing services to be provided and included columns for the offeror to include its "maintenance monthly bid price" and "price per building total relamp" for each of the line item requirements. The bid schedule also asked for the offeror's "total maintenance bid price" and "total price per building relamp". Prior to bid opening, S & C Construction called the contracting agency and allegedly was told by someone at the agency that monthly totals were requested. At bid opening on July 28, two of the three bids received offered prices on an annual basis; S & C Construction's bid was the only one priced on a monthly basis. S & C contends that its bid was the lowest one received at bid opening whether it is evaluated on a per month basis, as presented, or calculated on an annual basis (by the use of a multiplication factor of 12).

On July 31, the protester was notified that the solicitation had been canceled, pursuant to Federal Acquisition Regulation § 14.401-1(c)(1), due to the IFB's defective specifications. The contracting officer advised the firm that the bid schedule and specifications would be revised and the requirement resolicited. A new IFB was issued on December 7; a copy was mailed to S & C Construction on that date. The IFB was amended on December 22, and a copy of that amendment was mailed to the protester on that date. Bid opening took place on January 12, 1993. The protester did not submit the low bid at bid opening.

On January 22, 1993, S & C Construction filed an agency-level protest against the cancellation of the original solicitation. That protest alleged that only the bid schedule was revised in the new IFB (to also request individual prices for the "total relamping cost per building or area" and the "annual maintenance cost per building or area after total relamp.") The protester contended that the terms of the new IFB were not materially different from the terms of the original IFB, and that the agency therefore improperly canceled the earlier IFB. By letter of February 23, the Army dismissed the protest as untimely filed because the protest of the cancellation was not filed within 10 working days of the cancellation, and the protester's challenge to the terms of the new IFB was not filed prior to bid opening.

On March 4, S & C Construction filed the current protest with our Office. The protester contends that the terms of the second solicitation demonstrate that there was no compelling reason for the cancellation of the first IFB. S & C Construction specifically challenges the Army's conduct in canceling the first solicitation and reissuing the requirement with only a changed bid schedule format. The protester generally alleges bad faith and a breach of the agency's duty to make award to the low bidder under the original IFB.

Our Bid Protest Regulations require that protests based upon alleged apparent improprieties in a solicitation be filed by the time set for bid opening or the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1992). Protests of matters other than alleged solicitation improprieties must be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

S & C Construction's protest, challenging the cancellation of the original IFB based on the subsequent issuance of a virtually identical IFB, is untimely. This protest ground concerns a matter other than an alleged solicitation impropriety, and therefore falls under the 10-working-day rule. See Community Asphalt Corp., B-249475; B-249475.2, Sept. 14, 1992, 92-2 CPD ¶ 178. S & C Construction knew or should have known of its basis of protest--that the agency allegedly had misrepresented the reason for canceling the original IFB--when it received the new IFB. The record shows that the Navy mailed the protester a copy of the new IFB on December 7, and a copy of the amendment on December 22. Since we will presume, absent evidence to the contrary, that documents sent by mail are received within 1 calendar week of mailing, we conclude that S & C Construction knew or should have known its basis for protesting the cancellation, at the latest, on December 29.<sup>1</sup> Id.; WesternWorld Servs., Inc. d/b/a/ The Video Tape Co., B-243808, May 14, 1991, 91-1 CPD ¶ 469. Since S & C Construction did not protest the cancellation to the Army until January 22, well past the 10-working-day deadline, the protest is untimely.<sup>2</sup>

S & C Construction argues that even if its protest were untimely filed, our Office should consider it under the significant issue or good cause exceptions to our timeliness rules. 4 C.F.R. § 21.2(c). We see no basis to invoke either exception. The good cause exception is limited to circumstances where some compelling reason beyond the control of the protester prevents the protester from submitting a timely protest. Commercial Energies, Inc., B-242261.2, Mar. 21, 1991, 91-1 CPD ¶ 312. Here, the protester has presented no evidence why it delayed filing its protest for 3 weeks after it learned the basis of its protest. Additionally, the significant issue exception to our timeliness rules is limited to untimely protests that

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<sup>1</sup>Although afforded an opportunity to explain why its protest should be considered timely, S & C does not deny it received a copy of the solicitation by this date.

<sup>2</sup>S & C Construction also asserts that the agency's conduct in canceling the first IFB and reissuing it with minor changes constituted bad faith and a breach of its duty to fairly consider the bids and make award to the low bidder under the original solicitation. This argument is no more than a restatement of its assertion that the cancellation was improper, and is therefore untimely. Also, S & C Construction's allegation that the agency made material misrepresentations to the protester regarding the basis for cancellation is untimely; S & C Construction should have known of this protest basis when it received the new IFB.

raise issues of widespread interest to the procurement community and that have not been considered on the merits in a previous decision. DynCorp, 70 Comp. Gen. 38 (1990), 90-2 CPD ¶ 310. S & C Construction's protest of the cancellation of the original IFB and resolicitation does not meet this standard. While we recognize the importance of the matter to the protester, its complaint, particular to this procurement, simply does not present an issue not previously considered or of widespread interest to the procurement community. See GBF Medical Group/Safety Prod. Mktg., Inc.--Recon., B-250923.2, Nov. 24, 1992, 92-2 CPD ¶ 378.

The protest is dismissed.

  
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