



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diverco, Inc.

File: B-256844; B-256846; B-256847

Date: April 14, 1994

DECISION

Diverco protests the evaluation of its alternate offer under solicitation Nos. DLA750-93-R-0084, DLA750-93-R-0046, and DLA750-93-R-1245, issued by the Defense Logistics Agency, to procure National Stock Number (NSN) 3040-01-248-3995. Diverco protests the agency's alleged "ongoing failure and refusal to timely evaluate and qualify Diverco's alternate offer."

We dismiss the protests as untimely because they were filed more than 10 working days after the protest knew, or should have known, of the basis for its protest.

Diverco proposed to furnish an alternate part in response to the above solicitations. In a letter dated February 17, 1994, the agency informed Diverco that its alternate offers under solicitation Nos. DLA750-93-R-0046 and DLA750-93-R-0084 would not be evaluated for award due to the supply status of the part. The letter further informed Diverco of the need to submit additional information before the agency could evaluate the alternate offer under solicitation No. DLA750-93-R-1245. Diverco advises that it received this letter on March 10. Diverco filed the protests on March 28, more than 10 working days later.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon 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). In this regard, the protester's receipt of the February 17 letter advising of the status of the agency's evaluation of its alternate offer under each solicitation, is sufficient to start the ten day time period running. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268.

Our 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.--Request for 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. The grounds for an exception are not applicable in this case.

Finally, Diverco filed a "related" protest against these procurements on the same ground on March 30, assertedly based upon information provided by the agency in response to its Freedom of Information Act request. Although Diverco may have gained more support for its protest from this information, Diverco's ground for protest is exactly the same as the earlier untimely protest. An untimely protest cannot be made timely by virtue of the protester's later acquisition of additional information in support of the protest. See New Beginnings Treatment Center, Inc.--Recon., B-252517.2; B-252517.3, Apr. 29, 1993, 93-1 CPD 349. Consequently, Diverco's related protest is also dismissed as untimely.

The protests are dismissed.


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