



Comptroller General
of the United States

43204

Washington, D.C. 20548

Decision

Matter of: Fire Security Systems, Inc.

File: B-256696

Date: April 26, 1994

DECISION

Fire Security Systems, Inc. protests the award of a contract to RJN Interstate Corporation under invitation for bids (IFB) No. 609-38-93 issued by the Department of Veterans Affairs (VA) for the replacement of a fire alarm/sprinkler system at the VA Medical Center in Marion, Illinois.

We dismiss the protest as untimely.

The IFB required each bidder to provide a base bid for construction/installation work and a monthly price for guarantee period services, defined in the solicitation as any maintenance and repair of the fire alarm system that may be required for 2 years after equipment installation.¹

When bids were submitted on September 30, 1993, RJN was determined to be the apparent low bidder. Fire Security filed an agency-level protest on the same day, complaining that the agency had miscalculated total bid prices and that it, rather than RJN, was the low bidder. Specifically, Fire Security alleged that the agency erroneously based the calculation of guarantee period services on 24 months, rather than 12 months.

By letter dated October 12, the contracting officer denied Fire Security's protest, explaining that the solicitation, as amended, specified that the agency required 2 years of guarantee period services and therefore, calculation of the price for this requirement must be based on 24 months. The contracting officer explained that the protester could appeal this decision to the agency or to our Office within 10 working days after receipt of her letter and that if the

¹Amendment 8 to the solicitation stated that the guarantee period services "are reduced from 5 years to 2 years to run concurrently with the 1-year construction warranty." No later amendments concerning guarantee period services were issued.

protester filed an appeal with the agency it "may waive [its] right of further appeal to the Comptroller General at a later date."

In an October 18 letter to the contracting officer, the protester also argued that the awardee improperly identified itself as a small disadvantaged business (SDB) and improperly altered its bid form. The contracting officer responded by letter dated October 21 that the information and allegations in Fire Security's letter of October 18 did not change the agency's determination of October 12 and that the agency still considered Fire Security's protest without merit. By letter dated October 21, the protester appealed the decision of the contracting officer to the agency. This appeal was denied by letter dated January 21, 1994.

On March 11, Fire Security protested to our Office, arguing again that the agency had miscalculated the bid prices and that the awardee improperly identified itself as an SDB and improperly altered its bid form.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1993). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f).

Here, as noted above, by letters dated October 12 and October 21, the contracting officer denied Fire Security's protests concerning its price calculations and its allegations concerning the acceptability of the awardee's bid. The record shows that the protester received the October 12 letter on October 13 and therefore, had 10 working days from October 13 to protest the agency's price calculations to our Office. Similarly, Fire Security had actual knowledge of adverse agency action concerning its allegations about the acceptability of the awardee's bid upon receipt of the contracting officer's October 21 letter and should have

protested to our Office within 10 working days of that date.
Because Fire Security did not protest to our Office until
March 11, its protest is untimely.

Accordingly, the protest is dismissed.



John Van Schaik
Acting Assistant General Counsel