



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

Decision

Matter of: Rowe Incorporated
File: B-261194
Date: May 11, 1995

DECISION

Rowe Incorporated protests the award to Chrysler Corporation under solicitation FCAP-G5-99125-SN-8-23-94 by the General Services Administration (GSA) for modified vans.

We dismiss the protest as untimely.

Rowe's protest was filed in our Office on April 24, 1995, and was said to be based upon information received by Rowe from GSA on April 17 pursuant to a Freedom of Information Act request by Rowe. The information obtained included portions of Chrysler's proposal and contract, which Rowe alleges show that Chrysler's proposal did not comply with the requirements of the solicitation and/or was based on information not disclosed to the other competitors. Rowe asserts that the award to Chrysler was therefore improper, and that its contract should be terminated and award made to Rowe.

Award was made to Chrysler on October 21, 1994, as the low-priced, technically acceptable offeror. On October 28, Rowe received notice of this award. The record indicates that Rowe requested a debriefing on November 2 and that on November 14 the GSA contracting officer had a telephone conversation, wherein she, among other things, informed Rowe's representative that any debriefing would not include any discussion or disclosure of Chrysler's proposal. The debriefing occurred on December 7, where Rowe was advised that it did not receive the award because it did not submit the lowest price. At the debriefing, Rowe requested information regarding Chrysler's proposal and the evaluation thereof, which GSA declined to provide. On December 19, Rowe filed a Freedom of Information Act request for this information. After some clarification by GSA, Rowe was provided the information on which it bases this protest on April 17.

A protester has an affirmative obligation to diligently pursue information reasonably expected to establish whether a basis for protest exists. Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210. Thus, protests based on information obtained pursuant to the Freedom of

Information Act will only be considered timely under our Bid Protest Regulations if filed within 10 working days of receiving the information and if the request was filed within a reasonable amount of time. 4 C.F.R. § 21.2(a)(2) (1995); Diemaster Tool, Inc.--Recon., B-238877.4, Mar. 20, 1991, 91-1 CPD ¶ 304; Finkelstein Assocs., Inc., B-237441, Nov. 22, 1989, 89-2 CPD ¶ 497.

Here, we do not find that the protester diligently pursued the information on which it bases its protest, inasmuch as it first filed a Freedom of Information Act request more than 7 weeks after being notified of the award and five weeks after being advised that the information would not be provided by the contracting officer. A delay of this magnitude in making a Freedom of Information Act request to obtain information to ascertain a protest basis, after being apprised of the award, does not constitute diligent pursuit of the protest, such that the information obtained would form a basis for a timely protest. Id.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel