

P. Jordan



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

Decision

Matter of: Information Systems Planning and Analysis, Inc.

File: B-270141

Date: November 20, 1995

DECISION

Information Systems Planning and Analysis, Inc. (ISPA) protests the proposed award of a section 8(a) contract through the Small Business Administration (SBA) for support of automation networks at Headquarters, U.S. Army Forces Command (FORSCOM).

We dismiss the protest as untimely because it was filed more than 14 calendar days after the protester initially received actual or constructive knowledge of adverse agency action on its protest.

ISPA, an SBA 8(a) certified network management company, has been performing the unclassified portion of the FORSCOM automation management network. A related management contract for a classified FORSCOM network is performed under a contract with the U.S. Naval Air Warfare Center by Booz, Allen and Hamilton, Inc., a large business. In May 1995, FORSCOM advised ISPA that it was considering consolidation of the two contracts and provided an opportunity for ISPA and two other section 8(a) contractors to present briefings of their capabilities to perform the requirement. The agency planned to award an interim, sole source 8(a) contract for a period of 1 year with a 1-year option. As part of its determination of whether to go forward with the 8(a) interim contract, the agency planned to have Booz, Allen provide a proposal to perform the consolidated requirement. ISPA presented its briefing in late May. By letter of June 16, ISPA wrote to the Department of the Army Inspector General (IG) alleging that the administrative contracting officer was biased against it. It also alleged that the agency intended to award the consolidated contract to another firm and was improperly avoiding an 8(a) competition of the requirement.

By letter of June 28, the agency advised ISPA that it was selecting a different 8(a) contractor and explained why it believed that ISPA could not adequately perform the consolidated requirement. It also explained the agency's plan for determining

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whether to award a consolidated 8(a) contract.¹ In a letter dated July 25, ISPA challenged the agency's determinations about its capability and stated that it saw no "just cause to terminate [its] contract nor to run a competition for the classified network." It also expressed hope that the decision was not based on ISPA's report of the contracting officer to the IG. By letter of August 3, sent by telefacsimile, the agency again explained the basis for its decision not to consider ISPA for the 8(a) consolidated requirement. It also defended its position on the other issues raised in ISPA's July 25 letter. In early October, ISPA heard rumors that the agency was evaluating proposals for the consolidated requirement, and ISPA filed this protest on October 10.

Where, as here, a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 14 calendar days after the protester has actual or constructive knowledge of initial adverse agency action. Section 21.2(a)(3), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(3)); Bauer Compressors, Inc., B-244580, July 2, 1991, 91-2 CPD ¶ 16. Although it was not expressly labeled as a "protest," ISPA's July 25 letter constituted an agency-level protest.² To be regarded as a protest, a written statement need not state explicitly that it is in fact a protest, but must convey the intent to protest by an expression of dissatisfaction and a request for corrective action. Constantine N. Polites & Co.-Recon., B-233935.2, Feb. 17, 1989, 89-1 CPD ¶ 173. ISPA's July 25 letter conveys such an intent.

Consequently, the agency's August 3 letter, which explained why it declined to modify ISPA's current contract and reiterated its intent to select another contractor for the combined requirement, constituted initial adverse agency action in the form of a denial of the protest. 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.

¹In addition, the agency advised ISPA that it contemplated a subsequent competitive 8(a) procurement and invited ISPA to compete at that time.

²In its protest to our Office, ISPA identifies its June 16 letter to the IG and another letter, dated June 13, to the contracting officer as "protests." However, the June 13 letter ostensibly thanked the agency for the opportunity to make the briefing and the other letter was a formal complaint to the IG, not a protest. Even if these letters were considered protests, we would still find the protest to our Office untimely. The June 28 notice that the protester was eliminated from further consideration for the combined requirement would be considered the initial adverse agency action after the filing of the "protests." ISPA's protest here was not filed until 3 months later.

4 C.E.R. § 21.0(f); see Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58. Accordingly, the 14-day time period during which a protest must be filed with our Office commenced on August 3 when ISPA learned of the denial. Its protest, filed October 10, more than 2 months later, is untimely.

The fact that ISPA attempted to otherwise pursue the matter with the agency (by waiting for the IG to respond to its complaint) before filing its protest with our Office, did not toll our timeliness requirements.³ Once informed of initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while continuing to pursue the matter with the agency. Bauer Compressors, Inc., supra.

The protest is dismissed.

Comptroller General
of the United States

³In this regard, the protester argues that it believed that matter was not yet resolved based in part on a September 1 letter to its Senator from the FORSCOM Commander. In this letter the Commander stated that his staff was conducting an inquiry into the matters raised by ISPA and that he was committed to completing the investigation and reaching a final determination before allowing a final contract to be awarded. Since this letter was dated after the due date for a protest to our Office, it could not serve as a basis for concluding that the matter was not yet resolved.