

K. Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pottorff Air Products Sales

File: B-270595.2

Date: January 4, 1996

DECISION

Pottorff protests the specifications under invitation for bids (IFB) No. N63387-94-C-4619, issued by the Department of the Navy for installation of emergency vehicle exhaust removal systems at various locations in the San Diego, California area.

We dismiss the protest as untimely.

The solicitation was issued on June 28, 1995, and sought bids for a Nederman Magna emergency vehicle exhaust removal system. On November 1, the protester was advised by an agency official that the agency would not consider substitutions for the listed system. The protester then sent the agency an undated letter in which it requested a meeting to ask the agency to consider its system as well as the specified system. The agency responded in a letter dated November 8, that only the listed system met its requirements. The protester attempted to continue to discuss this matter with the agency. Bid opening was scheduled for 10:30 a.m. on November 27. Pottorff placed its agency-level protest in the box reserved for bids to be received for this solicitation.¹

Under our Bid protest Regulations, where a protest is filed first with the contracting agency, a subsequent protest to our Office will be considered only if the initial agency-level protest was filed within the time limits for filing a protest with our Office. 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) (1995); Mobile/Modular Express, B-246183, Nov. 13, 1991, 91-2 CPD ¶ 459. Pottorff's protest does not meet this requirement.

Pottorff submitted its agency-level protest of the solicitation specifications at bid opening in the box reserved for the submission of bids. Our regulations provide that protests based upon alleged apparent improprieties in an IFB, to be timely, must be filed prior to the bid opening time. Section 21.2(a)(1), 60 Fed. Reg. supra

¹According to the agency's time/date stamp, the bid was placed in the bid box at 10:24 a.m.

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(to be codified at 4 C.F.R. § 21.2(a)(1)). A protest filed with bids at bid opening cannot be considered as filed before opening since the contracting officer is not generally authorized to open the bid until the time set for bid opening. Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ 320. Since Pottorff's initial protest to the Navy was untimely, its subsequent protest to our Office is also untimely.²

The protest is dismissed.

Comptroller General
of the United States

²We do not view Pottorff's undated letter as a protest since it simply requested a meeting with the agency. However, even if we treated that letter as a timely protest of the solicitation terms, Pottorff's protest to our Office was untimely because it was filed more than 14 days after Pottorff received the agency's adverse November 8 letter (assuming 1 week for mail delivery). Section 21.2(a)(3), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(3)). Pottorff's continued pursuit of the matter with the agency did not toll our timeliness requirements; once informed of the initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. B&E Jackson & Assocs.-Recon., B-249489.2, Dec. 7, 1992, 92-2 CPD ¶ 393.