



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: IBP, Inc.

File: B-275259

Date: November 4, 1996

Ronald K. Henry, Esq., Kaye, Scholer, Fierman, Hays & Handler, LLP, for the protester.

Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under Bid Protest Regulations, section 21.2(a)(3), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(3)), a protest to the General Accounting Office (GAO) will not be considered if it was preceded by an initial agency-level protest that was not timely filed within the 10-day period for filing provided by GAO's regulations notwithstanding interim agency-level protest procedures that allow a 14-day period.

DECISION

IBP, Inc. protests the award of a contract to Monfort, Inc. under request for proposals No. DECA02-96-R-0028, issued by the Defense Commissary Agency for different grades of frozen ground beef for Department of Defense installations in Germany and the United Kingdom.

We dismiss the protest as untimely.

The protester was notified of the award on August 2, 1996, and at that time the protester requested a debriefing. The agency conducted a debriefing, by telephone, on August 14. On August 15, the agency provided the protester with additional documents regarding the award decision, as requested by the protester during the debriefing. Based on the information provided at the debriefing and contained in the documents released by the agency, the protester filed an agency-level protest on August 27. On October 16, the agency denied the protester's agency-level protest. On October 25, the protester filed this protest with our Office.

As noted by the protester in its protest, this protest is subject to the timeliness rules set forth in our Bid Protest Regulations as amended by the notice published in the Federal Register on July 26, 1996 (applicable to protests filed on or after August 8, 1996), 61 Fed. Reg. 39039-39047 (to be codified at 4 C.F.R. Part 21).

Under section 21.2(a)(2), 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. § 21.2(a)(2)), our Office will not consider a protest challenging a procurement conducted on the basis of competitive proposals where a debriefing is requested and, when requested, is required, if the protest is filed before the debriefing date offered to the protester (even if the protest basis was known before the debriefing); the protest instead should be filed not later than 10 days after the date on which the debriefing was held. The Real Estate Center, B-274081, Aug. 20, 1996, 96-2 CPD ¶ 74. Further, our timeliness rules provide that we will consider a matter initially protested to the agency only if the initial protest to the agency was filed within the time limits for filing a protest with our Office, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. Section 21.2(a)(3), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.3(a)(3)); see Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

Viewing the circumstances of this case in a light most favorable to the protester, we will consider that the debriefing was held on August 15. For the agency-level protest to have been timely filed for purposes of our Regulations, it had to be filed by August 26, that is, 10 days after the date on which the debriefing was held. (Since the tenth day after the debriefing fell on Sunday, August 25, the protester had until Monday, August 26 to file its agency-level protest. See section 21.0(e), 61 Fed. Reg. 39042 (to be codified at 4 C.F.R. § 21.0(e)). Accordingly, since the agency-level protest was filed on August 27, more than 10 days after the date on which the debriefing was held, we will not consider the subsequent protest filed with our Office.

We note that there is an inconsistency between our Bid Protest Regulations and the Federal Acquisition Regulation (FAR). Under interim agency-level protest procedures, effective July 26, 1996, protesters are afforded 14 days after the basis of protest is known or should have been known, whichever is earlier, to file an agency-level protest. FAR § 33.103(e) (FAC 90-41). Thus, while a protester may be timely from an agency's perspective if it files its agency-level protest within 14 days after the date on which the debriefing was held, as the protester did in this case, under our timeliness rules, if the protest was filed with the agency more than 10 days after this date, any subsequent protest to GAO will not be considered pursuant to section 21.2(a)(3). We have brought this matter to the attention of the civilian and defense agency acquisition regulatory councils and have recommended that the FAR be revised to provide a 10-day timeliness rule for agency-level protests to prevent potential misunderstandings among protesters.

The protest is dismissed.

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