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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187605

DATE: January 12, 1977

MATTER OF: Ahrens Aircraft Corporation

DIGEST:

Protest against agency's failure to adequately respond to protester's inquiries but which appears to be directed to agency's specification requirements is untimely and not for consideration on the merits since it was neither filed prior to closing date for receipt of technical proposals nor within 10 days of protester's learning of grounds of protest.

By letter dated December 13, 1976, the Ahrens Aircraft Corporation (Ahrens) protests the refusal of the United States Coast Guard to adequately respond to its "numerous enquiries" regarding procurement for transport aircraft.

Correspondence previously furnished this Office indicates that the procurement was conducted under the two step formal advertising method, with technical proposals due in March 1976 and bid prices due in October 1976 from those offerors whose technical proposals were found to be acceptable. Technical proposals had originally been due on April 14, 1975, but the first step of the procurement was reopened when the Coast Guard changed its requirements. The correspondence further indicates that the specifications require aircraft powered by jet engines while Ahrens was interested in furnishing aircraft with turboprops engines. Ahrens apparently was not furnished bidding forms for the procurement because Ahrens had indicated to the Coast Guard that it supplied turboprop aircraft rather than jet aircraft.

The protest is untimely. Our Bid Protest Procedures provide that protests based upon an alleged impropriety in a solicitation which is apparent prior to the closing date for receipt of initial proposals must be filed prior to that date, while other protests must be filed within 10 days after the basis for protest is known. 4 C.F.R. § 20.2(b) (1976). We think that in actuality,

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the protest is directed against the specification requirement for jet engines. On that basis, Ahrens' protest, filed well after the date set for receipt of initial proposals under the first step solicitation, must be regarded as untimely. See Morris Industries, B-182921, July 11, 1975, 75-2 CPD 31.

However, even if the protest merely goes to the Coast Guard's failure to respond adequately to Ahrens' inquiries, the protest would still be untimely. Our records show that the revised request for technical proposals, setting forth the March 1976 closing date for receipt of proposals, was synopsised in the Commerce Business Daily on November 7, 1975. Ahrens contacted the Coast Guard in January 1976 to receive "the exact requirements and the mission profiles." Ahrens did not receive a response until September 1976 after it had made additional inquiries. From this record, it is clear that if Ahrens was to participate in this procurement, it needed a response from the Coast Guard in time for it to submit a technical proposal by the March 1976 closing date. Accordingly, we think Ahrens' grounds for protest arose when the Coast Guard did not respond prior to that closing date. Since Ahrens did not protest within 10 days of the March closing date, its protest filed here in December is untimely.

Ahrens suggests that its protest should be viewed as timely because it had not been advised of the "correct channels for protest" prior to December. Our Bid Protest Procedures, however, were published in the Federal Register on April 24, 1975, see 40 Fed. Reg. 17979, and under the law that publication constitutes constructive notice to the protester of those Procedures. Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPD 445; Winston Bros. Company v. United States, 458 F.2d 49, 53 (Ct. Cl. 1972). Therefore, the fact that Ahrens had not been directly advised of our Bid Protest Procedures prior to December does not excuse Ahrens' failure to comply with them.

For the foregoing reasons, we must decline to consider the protest on the merits.


Paul G. Dembling
General Counsel