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DECISION



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

George Ruppert

PL I

FILE: B-190726 .

DATE: March 22, 1978

MATTER OF: Washex Machinery Corporation

DIGEST:

Protest alleging restrictive specifications filed with GAO more than 10 working days after initial adverse agency action--opening of bids in face of prebid opening protest filed with procuring activity which also requested delay in bid opening--is untimely filed with GAO, and does not raise significant issue within meaning of 4 C.F.R. § 20.2(c) (1977). Since Bid Protest Procedures have been published in Federal Register, protesters must be charged with constructive notice of their provisions.

Washex Machinery Corporation (Washex) protests the award of a contract to G.A. Braun, Inc. (Braun), under solicitation No. M2-48-77, issued on August 16, 1977, for the purchase of five washer-dryer extractors by the Veterans Administration (VA) Marketing Center, Hines, Illinois, for use at the VA Hospital in Houston, Texas.

On September 10, 1977, 3 days prior to the scheduled bid opening, Washex sent a mailgram to the VA Marketing Center protesting that the subject IFB was restrictive and that only one manufacturer could meet the specifications. Washex requested that (1) an amendment be issued deleting the requirement for three compartment machines and permitting either two or three compartment machines; and (2) " * * * time and date for return of offers should be extended 2 weeks." Washex contends it would then be able to offer its two compartment machines which would meet the VA's minimum needs.

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Bid opening was postponed for 1 day after receipt of the protest mailgram and all bidders on the mailing list were notified. VA reports that its requirements as stated were verified with the VA Supply and Building Management Services office and bid opening occurred on September 14, 1977. Only one bid was received and contract V797P-235A was awarded to Braun on September 26, 1977.

By letter dated September 26, 1977, the VA advised Washex, in effect, that its protest concerning restrictive specifications was denied and that award had been made to Braun. By letter to the VA dated September 29, 1977, Washex acknowledged receipt of the September 26, 1977, VA letter and stated that "Specific reasons for denial of our protest are not given; therefore, we consider this to be an unacceptable reply." Apparently, the VA did not submit a further response to Washex after receiving the September 29, 1977, letter and the record discloses that Washex thereafter protested the award to the VA by letter of November 4, 1977. This letter indicated that the basis of the protest was an alleged impropriety in the solicitation which, Washex states, was called to the attention of the VA prior to bid opening. By letter dated November 15, 1977, Washex protested the award to our Office contending that the specifications were restrictive. Washex contends that the VA Marketing Center acted improperly and that such action raises an issue significant to VA's procurement practices and procedures on this project.

Our Bid Protest Procedures, at 4 C.F.R. § 20.2(a) (1977), require that matters protested initially to the procuring agency must be subsequently protested to this Office within 10 days of the protester's receiving actual or constructive notice of "initial adverse agency action." We have held that the opening of bids in the face of a protest alleging an impropriety in the specifications especially where, as here, the protester requests a delay in bid opening, constitutes such adverse agency action. Therefore, the failure of Washex to protest to our Office within 10 days of the extended bid opening date renders the subsequent protest untimely. See The Ellis Company, B-187387, September 24, 1976, 76-2 CPD 282, and cases cited therein.

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Washex also claims that the VA failed to advise that it had 10 working days to appeal the VA's denial of its protest. While it is unfortunate that Washex may have been unaware of our Bid Protest Procedures and their time constraints, this lack of knowledge is not sufficient justification for considering an otherwise untimely protest. Since our Bid Protest Procedures have been published in the Federal Register (40 Fed. Reg. 17979, April 24, 1975), protesters such as Washex must be charged with constructive notice of their provisions. Dewitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47; Art Metal - U.S.A., Inc., B-164411, August 29, 1975, 75-2 CPD 132; Twycro, Inc., B-185126, December 23, 1975, 75-2 CPD 408.

While not agreeing that its protest is untimely, Washex asserts that we should consider the protest under 4 C.F.R. § 20.2(c) as raising an issue significant to procurement practices and procedures. Washex contends that VA's refusal to change the specifications precluded full and free competition and resulted in the Government incurring unreasonable costs for the items.

Our Office has stated that the significant issue exception to the timely filing requirement must be exercised sparingly if our timeliness standards are not to become meaningless. COMTEN, B-185394, February 24, 1976, 76-1 CPD 130, affirmed B-185394, May 18, 1976, 76-1 CPD 330. We will not regard an issue as significant unless it is of widespread interest or goes to "the heart of the competitive procurement process." Williamette-Western Corporation, et al., 54 Comp. Gen. 375, 376 (1974), 74-2 CPD 259; 52 Comp. Gen. 20 (1972). Notwithstanding Washex's categorization of the objections raised in this protest as "significant issues," we believe the issues essentially concern a question of the alleged restrictiveness of specifications for a specific procurement. We have held that where the merits of a protest involve issues which have been considered in prior decisions, such issues are not considered significant within the meaning of 4 C.F.R. § 20.2(c) (1977). See The Public Research Institute of the Center for Naval Analyses of the University of Rochester, B-187639, August 15, 1977, 77-2 CPD 116.

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Protests concerning restrictive specifications have been considered by our Office many times in the past and therefore the subject protest which raises the same issue is not "significant" within the meaning of our Bid Protest Procedures. See Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPD 445; D.A. Cruciani and Frank A. Agnone, B-187958, December 21, 1976, 76-2 CPD 518; Berz Ambulance Service, Inc., B-187349, June 8, 1977, 77-1 CPD 411.

Accordingly, the protest is not for our consideration.


Paul G. Dembling
General Counsel