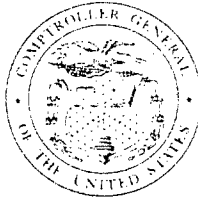


DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

10,775

FILE: B-194505

DATE: July 18, 1979

MATTER OF: Crown Laundry and Dry Cleaners, Inc.

[Protest Alleging Erroneous Information in IFB]

DIGEST:

1. While disputes over agency decisions to perform work in-house generally involve policy matters for Executive Branch resolution, agency's soliciting of bids to be compared with in-house cost estimate to determine if contract will be awarded, followed by faulty or misleading cost comparison, is viewed by GAO as detrimental to procurement system. However, allegation that such misleading comparison was made will not be considered where protest is untimely.
2. Under GAO Bid Protest Procedures, basis for protest arises when factual grounds of protest became known to protester, not when protester subsequently receives advice or information indicating that facts provide basis for protest. Consequently, protest filed more than 10 days after factual basis for protest was known but within 10 days of protester's receipt of advice that it had grounds for viable protest is untimely.

Crown Laundry and Dry Cleaners, Inc. (Crown) filed a protest with this Office on April 3, 1979, objecting to the inclusion of erroneous information in IFB F22600-79-B-0007, issued by Keesler Air Force Base, Mississippi. The IFB, for laundry and dry cleaning services, provided that the solicitation could be canceled if the lowest bid was more than the Government estimate of the cost of providing the services itself. Since Crown's bid, the only one submitted, offered a price higher than

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the Air Force estimate, the agency canceled the solicitation by amendment dated January 22, 1979. The laundry and cleaning services are presently being provided in-house by the Air Force.

Crown contends that its bid was overpriced as a result of its reliance upon erroneously high rates stated in the solicitation for health and retirement benefits service employees would receive if directly employed by the Air Force, and requests resolicitation using the correct rates. The Air Force, admitting that the IFB contained erroneously high rates for Federal health and retirement benefits, contends that Crown's protest is untimely because it was not filed within 10 working days of cancellation of the solicitation and argues that the error should not have affected Crown's bid as the benefits which the contractor must pay were established by the Department of Labor pursuant to the Service Contract Act of 1965, as amended, 41 U.S.C. 251 et seq. (1976).

Generally, we regard a dispute over an agency decision to perform work in-house rather than to contract out for those services as involving a policy matter to be resolved within the Executive Branch. See, e.g., General Telephone Company of California, B-189430, July 6, 1978, 78-2 CPD 9. When, however, an agency utilizes the procurement system to aid in its decisionmaking, spelling out in a solicitation the circumstances under which the Government will award/not award a contract, we believe it would be detrimental to the system if, after the agency induces the submission of bids, there is a faulty or misleading cost comparison which materially affects the decision as to whether a contract will be awarded. Kahoe Enterprises Incorporated, B-183866, June 17, 1976, 76-1 CPD 389.

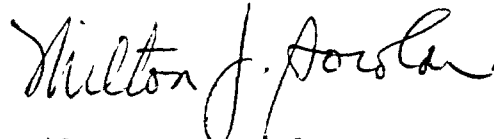
Although the protester suggests that such a misleading comparison resulted here because of erroneous data in the IFB, we will not consider the protest because we agree with the Air Force that the protest is untimely. The Air Force reports that the protester had been given an

opportunity to examine the in-house cost estimate and was provided a copy of that estimate, so that it knew or should have known of grounds for protest when it received the January 22 notice of IFB cancellation. Crown does not dispute those facts, but merely asserts that it did not learn it had a valid protest until its representative visited Washington on March 27. By that we assume the protester means he sought and received advice that the facts warranted a protest.

Our Bid Protest Procedures require that a protest be filed within 10 days of when a protester knows or should know of the "basis for protest." See 4 C.F.R. § 20.2(b) (1979). One of the purposes of that 10-day rule is to allow potential protesters a reasonable opportunity to determine if they wish to protest. Schreck Industries, Inc., B-194818, June 13, 1979, 79-1 CPD. In other words, upon learning of facts which could be the basis for protest, a potential protester has 10 working days from that time to obtain whatever written or oral information or advice it wants and to file a protest if it so desires. Schreck Industries, Inc., supra. To allow a potential protester to sit back, seek advice or information some time after the factual basis for protest arises, and then file a protest would subvert the intent of the timeliness provisions of our Procedures, which is to remove, within a reasonable time, the cloud of uncertainty which hangs over any procurement which is subject to protest. Consequently, we view the "basis for protest" as arising when the factual basis of a protest becomes known, rather than when a potential protester later learns or is advised that those facts are protestable.

In this case, the protest was filed on April 3, well after the protester received the January 22 amendment and the Air Force estimate. Accordingly, we view the protest as untimely and, contrary to the protester's contention, do not find the case appropriate for review under the significant issue exception to our timeliness rules. See 4 C.F.R. § 20.2(c). The protest therefore is dismissed.

We point out that, as the Air Force states, rates which appeared in the IFB were applicable only to in-house work and were not the rates to which Crown would have been subject had a contract been awarded, so that the computation of Crown's bid should not have been directly affected by the error.

A handwritten signature in cursive script, reading "Milton J. Socolar".

Milton J. Socolar
General Counsel