

DECISION



12145 PLZ
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-196655

DATE: November 28, 1979

MATTER OF: Dennison KYBE Corporation

DIGEST:

1. Where [protest against alleged nonresponsiveness of awardee's bid] was filed with GAO later than 10 working days after basis for protest was known or, in alternative, after initial protest to contracting activity was denied, it is untimely and not for consideration.
2. Protest not filed until after bid opening against failure of contracting activity to insert certain prerequisite to bidding in invitation or to procure directly from protester under another contract is untimely filed and not for consideration.

The Dennison KYBE Corporation (KYBE) protests the contract award to another firm under White Sands Missile Range invitation for bids No. DAAD07-79-B-0069 on the basis that the awardee's bid was nonresponsive since, for various reasons, the equipment offered does not conform to the specification requirements in the invitation. The reasons for the nonresponsiveness contention were made known to the contracting officer shortly after bid opening. After the receipt by KYBE of the October 1, 1979, contracting activity letter, wherein bidders were advised that an award had been made, KYBE offered to assist the activity, specifically during October 5 and 9 conversations, in a technical evaluation of the awardee's equipment as regarded the KYBE nonresponsiveness contention. KYBE was advised, apparently at least by October 9, that no further technical evaluation was necessary and that the award would not be disturbed. The KYBE protest letter of October 30 was received by our Office on November 2.

It is unclear whether, after bid opening and prior to the receipt by KYBE of the award notice, a protest was lodged by KYBE with the contracting officer. It

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Contract award
protest
untimely bid - protest
nonresponsiveness
Bidding invitation
specification

is further unclear whether KYBE protested during its October 5 and 9 conversations. However, should we presume that KYBE did protest the award during the October 5 and/or 9 conversations, that protest was denied on October 9 when KYBE was told that no further technical evaluation of the awardee's bid would be made and that the award would not be disturbed. Since, under our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1979), KYBE had 10 working days from the time its protest was denied by the contracting activity to file a protest with our Office, its protest of November 2 to our Office is untimely and not for our consideration. ✓

Presuming that KYBE did not protest to the contracting activity, by at least October 5 KYBE knew that an award had been made to a bidder who had, in the view of KYBE, submitted a nonresponsive bid. Under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2), a bidder has 10 working days from the time the basis of its protest is known, or should have been known, to file a protest with our Office. The protest filed with our Office on November 2 is untimely and not for our consideration. }

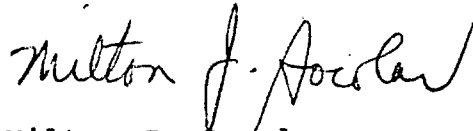
KYBE further states that:

"One other item of information which might merit consideration is that equipment purchased from Dennison KYBE Corporation is covered by the provisions of GSA contract (GS.00C.01672). To the best of our knowledge the other equipment manufacturers have not entered into such an agreement which would extend maximum benefits to all procurement activities by Executive Department Agencies."

We have been advised that the terms of the invitation did not make the existence of such agreements a prerequisite for bidding on the procurement. Should KYBE be protesting the failure to include this in the invitation as a prerequisite

to bidding or to procure the equipment from it under its General Services Administration contract, our Bid Protest Procedures require that any alleged improprieties in the solicitation be filed prior to the bid opening date, and any such protest is now untimely and not for our consideration. 4 C.F.R. § 20.2(b)(1) (1979). ✓

Accordingly, the protest is dismissed.



Milton J. Socolar
General Counsel