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DECISION



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

FILE: B-198811

DATE: October 10, 1980

MATTER OF: National Systems Management Corporation

[Untimely Protest of Navy Contract Award]

DIGEST:

Protest is untimely because not diligently pursued where protester delayed more than 8 weeks after notification of award to complete Freedom of Information Act request which led to information underlying protest.

[National Systems Management Corporation (NSM) DLG 05234
protests award of contract No. N00123-80-D-0037 by the
Department of the Navy to VSE Corporation pursuant to *DLG 05235*
request for proposals No. N00123-79-R-1518.]

The contract, a time and materials contract for engineering services at the Navy's Fleet Analysis Center, Corona, California, was awarded to VSE Corporation on December 10, 1979. NSM filed its protest in our Office on May 13, 1980, alleging that the contract awarded to VSE Corporation differs materially from the requirements set forth in the solicitation and that the evaluation of proposals was not made in accordance with the evaluation criteria enumerated in the request for proposals.

The protest is dismissed.

NSM stated in its original protest letter to our Office that it did not discover the bases for its protest until it obtained a copy of the VSE Corporation contract from the Navy on March 14, 1980, pursuant to a Freedom of Information Act (FOIA) request filed with the Navy. NSM protested to the contracting officer on March 25, 1980. [On May 12, 1980, NSM received a reply to its protest stating that the contract as written did not reflect the Navy's intentions and that the contract would be modified so as to conform with the requirements of the request for proposals.]

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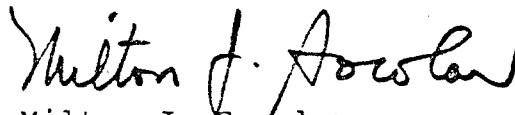
At a conference held at the General Accounting Office on September 10, 1980, several facts became evident to us for the first time. NSM indicated that it had been informed by the contracting officer on or about December 10, 1979, that award was being made to VSE Corporation on that date. NSM also stated that on or about December 10, 1979, the contracting officer told an NSM representative the results of the technical and pricing evaluation.

Subsequently, NSM supplied our Office with copies of pertinent correspondence between it and the Navy. These documents show that NSM made its initial FOIA request, for section E of VSE's contract only, by letter dated January 4, 1980. By letter of January 14, the Navy informed NSM that its FOIA request could not be honored until NSM promised to pay search and reproduction costs. NSM waited until February 19, 1980, to promise to pay the search and reproduction costs associated with its FOIA request. On February 27, the Navy supplied NSM with section E of VSE's contract. By letter of March 4, NSM requested the remainder of the VSE contract under the FOIA. The Navy supplied this information to NSM on March 14.

[We have held that a protester's failure to diligently pursue its protest by seeking within a reasonable time the information which reveals the basis for protest requires rejection of the protest as untimely. See National Council of Senior Citizens, Inc., B-196723, February 1, 1980, 80-1 CPD 87, wherein we held a protest untimely because of the protester's failure to file a request under the FOIA for more than 5 weeks after notice that its proposal was rejected.

In the present case, [NSM did not request a debriefing and did not make its initial FOIA request until more than 3 weeks after first being told of the award to VSE Corporation. Moreover, after being informed that its FOIA request was deficient, NSM waited more than 4 weeks to promise to pay the associated costs and thereby perfect its FOIA request.] After receiving section E of the contract, NSM waited 1 additional week to request the remainder of VSE's contract. [Even though the actual

bases for protest were revealed to the protester in the Navy's response to the FOIA request, the protester, by taking a dilatory and piecemeal approach, was responsible for more than 8 weeks of delay in obtaining the information which provided the bases for protest. Since NSM did not diligently pursue this matter by requesting a debriefing or perfecting its FOIA request within a reasonable time, we find the protest untimely.



Milton J. Sodolar
General Counsel