



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hooven Allison
File: B-224785
Date: October 10, 1986

DIGEST

A protest filed with the General Accounting Office following adverse agency action on a protest that was untimely filed with the contracting agency is untimely because the initial agency protest was not timely filed. The fact that the contracting agency considered the protest on the merits does not change this result.

DECISION

Hooven Allison (Hooven) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) NO. 7PRT-52878/B5/7SB for rope, issued by the General Services Administration. Hooven's bid was rejected because Hooven bid on the basis of "per pound" of rope, not "per reel" as required by the IFB Schedule and Hooven's price per reel could not be determined from its bid. Hooven contends that under the IFB the price per pound could be converted to a price per reel and thus its bid was responsive.

Alternatively, Hooven complains that the IFB was ambiguous. Although Hooven apparently recognizes that the IFB generally called for prices per reel, it maintains that, under prior solicitations, bidding was permitted on a price per pound basis and that the current solicitation failed to highlight the change or otherwise indicate that prices per pound was an unacceptable basis for bidding.

We dismiss the protest without obtaining an agency report because it is clear that the protest is untimely. 4 C.F.R. § 21.3(f).

The IFB was issued on June 17, 1986, and bid opening was July 31. Documents attached to Hooven's protest indicate that on August 13, Hooven met with the contracting officer,

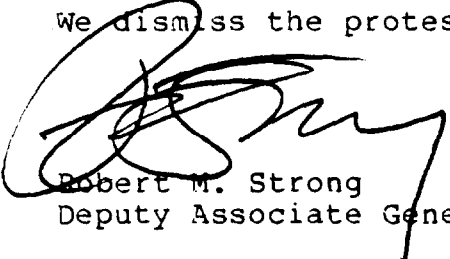
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and discussed the problems with its bid. At this meeting, the protester was advised orally that its bid was nonresponsive and would not be considered for award. Hooven protested this decision to GSA by letter dated September 3, which was received by GSA on September 4. In its letter, Hooven also raised its concerns that the IFB was not clear and that the agency's action was not consistent with prior procurements. GSA denied this protest by letter dated September 18, which was received by Hooven by September 24. On September 25, Hooven filed its protest with our Office.

Our Bid Protest Regulations require that protests be filed with either the contracting agency or our Office within 10 working days after the basis of the protest is known. 4 C.F.R. § 21.2(a)(2) (1986). Hooven's protest to the agency, filed on September 4, is untimely since it was filed more than 10 working days after August 13, when Hooven first learned that the agency had concluded its bid was nonresponsive and would not be considered for award. See 4 C.F.R. § 21.2(a)(2) (1986); AMI Industries, Inc., B-222561, June 5, 1986, 86-1 C.P.D. ¶ 527. Where, as here, a protest is first filed with the contracting agency, a subsequent protest to our Office will be considered timely only if the initial protest was timely. 4 C.F.R. § 21.2(a)(3). Since Hooven's initial protest to the agency was not timely filed, the subsequent protest to our Office is also untimely and will not be considered. AMI Industries, Inc., B-222561, supra.

The fact that the agency considered the untimely protest on the merits does not alter this result, since our timeliness regulations may not be waived by action or inaction of a procuring activity. Ardrox, Inc., B-221241.2, Apr. 30, 1986, 86-1 C.P.D. ¶ 421.

We dismiss the protest.



Robert M. Strong
Deputy Associate General Counsel