



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dontas Painting Company
File: B-226797
Date: May 6, 1987

DIGEST

Protest filed more than 1 month after the contracting agency denied the protester's agency-level protest is untimely and is not for consideration under either the "good cause" or "significant issue" exceptions to our timeliness regulation.

DECISION

Dontas Painting Company protests the rejection of its low bid under invitation for bids (IFB) No. GS05P87GBC0009, issued by the Public Building Service, General Services Administration (GSA), Chicago, Illinois, for paint work. Dontas' bid was nonresponsive because its bid bond guarantee was for an insufficient amount.

We dismiss the protest as untimely.

GSA awarded the contract to the second low bidder on January 29, 1987, and advised Dontas that its bid was non-responsive because it failed to submit a bid guarantee as required by the IFB by letter dated February 6, 1987. The IFB required that the bid guarantee be equal to 20 percent of the amount of the total bid. Dontas' total bid price was \$182,550; however its bid guarantee was for \$35,670, which is less than 20 percent of the total bid. Dontas protested to GSA the decision to reject its bid by letter dated February 13, 1987. GSA denied Dontas' protest by letter dated March 6, 1987. Dontas' protest was filed in our Office on April 15, 1987.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), require protests initially filed at the contracting agency to be filed at our Office within 10 working days of actual or constructive notice of initial adverse agency action.

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Because Dontas did not file its protest until more than 1 month after the contracting agency denied its agency-level protest, we find that it is untimely.

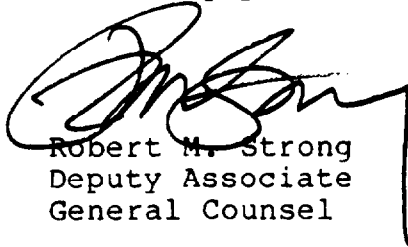
However, Dontas argues that even if its protest is considered untimely, we should waive the timeliness requirements, because there is good cause and the protest raises issues that are significant to the procurement system. See 4 C.F.R. § 21.2(c). Dontas essentially contends that there was good cause for not filing in a timely manner because it did not know of its basis of protest and was unaware of our Regulations. Dontas states that the February 6 notice was inaccurate and misleading and that the reason that it submitted an insufficient bid guarantee was because GSA amended the solicitation, which increased the price of its original bid, without notifying it of the need to submit an increased bid guarantee. Dontas argues that its basis of protest is that GSA should have provided him a second bid guarantee form. In this regard, Dontas states that it did not become aware of the basis of protest until it received further clarification of the agency's decision to deny its protest on April 4, 1987.

The good cause exception to our timeliness requirements is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. Dock Express Contractors, Inc.--Request for Reconsideration, B-223966.2, Mar. 4, 1987, 87-1 C.P.D. ¶ ____. We consistently have held that a protester's lack of knowledge of our regulations is no defense to a dismissal since our regulations are published in the Federal Register, and protesters are charged with constructive notice of their contents. See Scientific Instruments Center, Inc., B-223429, Aug. 21, 1986, 86-2 C.P.D. ¶ 210. Furthermore, a protester has an affirmative obligation to pursue diligently the information that forms the basis of its protest, and if it does not do so, our Office will dismiss the ultimately filed protest as untimely. Continental Telephone Company of California, B-222458.2, Aug. 7, 1986, 86-2 C.P.D. ¶ 167. At the latest, Dontas knew the basis of protest when the agency denied its agency-level protest. See 4 C.F.R. § 21.2(a). The fact that Dontas continued to pursue its complaint with the contracting agency does not toll the period for filing with our Office. Scientific Instruments Center, Inc., B-223429, supra. Thus, we find that Dontas' circumstances do not qualify as good cause for waiver of our timeliness rule.

Regarding the significant issue exception, Dontas argues that GSA's handling of the procurement is significant to the procurement community. However, Dontas' allegations actually

relate to how GSA treated it in this particular procurement. We consider untimely protests under the significant issue exception only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. Continental Telephone Company of California, B-222458.2, supra. We have considered the rejection of a bid because of an insufficient bid guarantee on numerous occasions. See e.g., Electrical Systems Engineering Company, B-223199, Sept. 4, 1986, 86-2 C.P.D. ¶ 258; United Control Systems, Inc., B-219412, Aug. 9, 1985, 85-2 C.P.D. ¶ 153.

Accordingly, the protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel