



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ANEFCO, Inc. -- Request for Reconsideration

File: B-225502.2

Date: May 14, 1987

DIGEST

General Accounting Office affirms prior dismissal as untimely of protest against failure to include proposal in competitive range where protester has not shown that its forbearance from protesting after receipt of an agency letter detailing specific reasons for the rejection of its proposal was justified.

DECISION

ANEFCO, Inc. requests reconsideration of our dismissal of its protest against the exclusion of its proposal from the competitive range under request for proposals No. DE-RP04-86AL33569, issued by the Department of Energy (DOE), Albuquerque Operations Office, New Mexico. We dismissed the protest because ANEFCO did not protest within 10 working days of when the basis for protest was known--receipt by the protester of a detailed October 20, 1986 letter from the contracting officer rejecting the proposal. 4 C.F.R. § 21.2(a)(2) (1986).

In requesting reconsideration, ANEFCO again argues that, following receipt of the rejection letter, it justifiably did not protest because it was told during a November 7 telephone conference with the contracting officer that DOE was willing to meet with ANEFCO to consider the possible reinstatement of the proposal. According to ANEFCO, DOE was to contact the protester to arrange the meeting; when DOE thereafter failed to contact ANEFCO, the company was compelled to file the protest. ANEFCO also claims that the rejection letter was ambiguous and its forbearance from protesting in anticipation of the expected meeting with DOE was warranted.

As we pointed out in our dismissal, offerors rejected from the competitive range usually are not provided detailed bases for the rejection. Here, however, the rejection letter contained

specific reasons for the rejection and followed a detailed DOE request for clarification and information from ANEFCO and an extensive response by ANEFCO to that request. While ANEFCO argues that the rejection letter was ambiguous, its protest specifically took issue point-by-point with the letter's detailed reasons for proposal rejection and under the circumstances we think that ANEFCO was placed on clear notice of its basis for protest when it received the letter.

As for the meeting that never took place, according to the agency it had stated only that it was willing to consider anything that ANEFCO could provide on the subject of the possible failure of DOE to evaluate properly ANEFCO's proposal, and that ANEFCO was to indicate its intentions within a few days of the telephone conference but never responded further. In this regard, the record contains no evidence that DOE had agreed to do anything other than consider what ANEFCO might present. There is certainly no indication that the agency, having just completed a thorough evaluation of ANEFCO's proposal, had agreed to initiate a review of its action, and in the absence of evidence so indicating, we find the agency's statement more persuasive than the protester's position. Accordingly, we again find that ANEFCO's failure to protest within 10 days of receipt of the rejection letter can not be excused. -

Our prior dismissal is affirmed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel