



The Comptroller General
of the United States

Washington, D.C. 20548

Slonker - PL

Decision

Matter of: Tate Engineering, Inc.

File: B-227600

Date: July 28, 1987

DIGEST

Protest of allegedly defective specifications filed almost 2 months after bid opening is untimely, even though the protester initially filed a timely protest with the contracting agency, since the agency's action in proceeding with bid opening without responding to the protest constituted an initial adverse agency action after which a protest to the General Accounting Office concerning the matter was required to be filed within 10 working days in order to be considered timely under the Bid Protest Regulations.

DECISION

Tate Engineering, Inc. (TEI), protests that the specifications are overly restrictive in invitation for bids (IFB) No. GS-11P-87MKC2033, issued by the General Services Administration (GSA) for the repair of a boiler at GSA Central Heating and Refrigeration Plant in Washington, D.C. The protester claims that the solicitation requirements can be met by only one vendor. We dismiss the protest as untimely.

The solicitation was issued on March 26, 1987, with bid opening on April 28. By mailgram dated April 16, 1987, TEI protested to GSA, contending that the specifications were restrictive of competition. GSA proceeded with bid opening as scheduled on April 28, and on June 22, 1987, the contract was awarded to the lower of the two bidders who responded to the solicitation. Neither bidder was TEI.

By letter addressed to GSA, dated May 1, 1987, TEI complained that the agency had not responded to its protest and noted the fact that bids were received from only two bidders at bid opening supported TEI's position that the solicitation specifications were restrictive of competition. At that time, TEI also sent to our Office a copy of its

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May 1 letter to GSA; however, that letter did not indicate it was to be considered a protest to our Office nor did it request a decision of the Comptroller General.

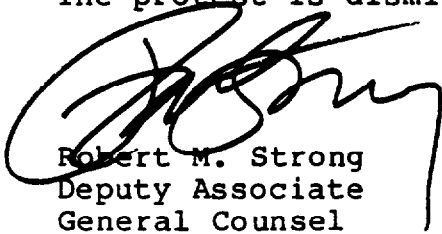
By letter of May 6, our Office acknowledged and responded to the information copy of TEI's May 1 letter to GSA, and informed TEI that:

". . . to be regarded as a protest to the GAO, the communication [to GAO] shall specifically request a ruling by the Comptroller General." See 4 C.F.R. § 21.2(a) (1986).

TEI did not correspond further with our Office until June 29. This was apparently after having received GSA's June 22 formal denial of its agency level protest and the notice of contract award. On June 29, TEI filed a protest with GAO "formal[ly]" requesting "a hearing and fair evaluation" of the matter.

GSA maintains, and we agree, that TEI's protest is untimely since the protester knew as early as May 1, that the agency had proceeded with bid opening, notwithstanding TEI's protest to GSA, yet TEI did not request a decision of our Office until almost 2 months after bid opening. Our Bid Protest Regulations require that protests against alleged solicitation improprieties apparent on the face of the solicitation be filed with our Office or the procuring agency prior to bid opening. 4 C.F.R. § 21.2(a)(1). Where, as here, a protest has been first timely filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of the protester's receipt of actual or constructive notice of initial adverse agency action on that protest. 4 C.F.R. § 21.2(a)(3). TEI knew on May 1 that GSA had proceeded with bid opening in spite of TEI's protest of the specifications. Since this was the initial adverse agency action on its protest, TEI's June 29 protest is untimely. See U.S. Elevator Corp., B-224237, Feb. 4, 1987, 87-1 C.P.D. ¶ 110.

The protest is dismissed.



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