



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J&J Maintenance Inc.
File: B-223355.2
Date: August 24, 1987

DIGEST

Protest is untimely because not diligently pursued where the protester waited 3 weeks from notice of cancellation of the solicitation to orally request information concerning the solicitation's cancellation and then waited an additional 4 weeks before filing a Freedom of Information Act request.

DECISION

J&J Maintenance Inc. (J&J) protests the cancellation of request for proposals (RFP) No. F05611-86-R-0076 issued by the United States Air Force Academy for janitorial services.

The protest is dismissed.

The solicitation was issued on April 7, 1986, but after receipt of best and final offers the Air Force canceled the solicitation on March 24, 1987, and on that date informed J&J that the cancellation was due to major changes to the performance work statement. J&J protested the cancellation of the solicitation to this Office on June 16, 1987.

Our Bid Protest Regulations state that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). J&J argues that its protest is timely because it has acted diligently to obtain information as to the reason for cancellation of the solicitation but up to the time of filing its protest with this Office it still does not have actual knowledge as to why the solicitation was canceled. In this regard J&J states that it discussed the cancellation with Air Force officials on April 15, 1987, and at that time orally requested information concerning the cancellation. J&J states no information was provided. On May 14, 1987, J&J filed a Freedom of Information Act (FOIA) request with the Air Force requesting information concerning the solicitation's cancellation.

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On June 1, the Air Force issued a new solicitation for the janitorial services and J&J received this invitation for bids (IFB) on June 3. J&J then filed its protest on June 17 stating that it believes the solicitation was canceled to change the procurement from an RFP to an IFB format and to change some of the services. J&J cites several decisions of this Office and states that they stand for the proposition that a protest is not untimely, even though the protester might have discovered the basis of the protest sooner than the protester did, if the protester acted diligently and pursued the possible grounds of protest by filing a FOIA request promptly upon the event occurring raising the subject of the protest. See Pacific Towboat and Salvage Co., B-218427.3, Nov. 27, 1985, 85-2 C.P.D. ¶ 609 (FOIA request filed 6 days after the event) Carrier Corp., B-214331, Aug. 20, 1984, 84-2 C.P.D. ¶ 197 (FOIA request filed 1 day after the event); Alan Scott Industries; Grieshaber Manufacturing Company Inc., B-212703, B-212703.2, Sept. 25, 1984, 84-2 C.P.D. ¶ 349 (FOIA request filed 25 days after the event).

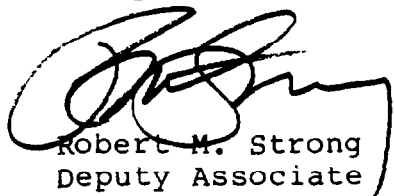
In J&J's case, although an oral request was made 22 days after the RFP was canceled, J&J did not actually file a FOIA request until more than 7 weeks had passed from the date of cancellation.

We have held that a protester's failure to 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, Feb. 1, 1980, 80-1 C.P.D. ¶ 87, in which we held a protest untimely because of the protester's failure to file a request under FOIA for more than 5 weeks after notice that its proposal was rejected.

J&J did not perfect its FOIA request promptly i.e., within 1 to 25 days, as occurred in the above decisions upon which it relies. Rather, J&J's situation is more akin to that found in National Systems Management Corp., B-198811, Oct. 10, 1980, 80-2 C.P.D. ¶ 268, in which the protest was found untimely because the protester did not request a debriefing and make a FOIA request until more than 3 weeks had passed after being told of the award to its competitor and even then the protester waited over 8 weeks after being told of the award to perfect its deficient FOIA request.

Since J&J did not perfect its FOIA complaint until more than 7 weeks after the date of cancellation its protest is untimely.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name and title.

Robert M. Strong
Deputy Associate
General Counsel