



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Benju Corporation
File: B-228571
Date: November 4, 1987

DIGEST

Protest filed with GAO subsequent to agency-level protest is dismissed as untimely where the original protest was untimely filed with agency.

DECISION

Benju Corporation protests the award of a contract to Tru-Vac, Inc., under request for proposals (RFP) No. DLA400-87-R-4799, issued by the Defense Logistics Agency (DLA).

We dismiss the protest as untimely.

The closing date for receipt of proposals under this RFP was in June of 1987. In July and August, DLA requested proposal acceptance period extensions from Benju and the other offerors, which they granted. On September 25 DLA awarded the contract to Tru-Vac. On September 28, Benju protested to DLA alleging that the procurement should have been conducted under the sealed bid procedures rather than negotiated. Benju also questioned the propriety of the proposal acceptance period extensions and the fact that the delivery schedule under the RFP was not extended when these extensions were requested. In addition, Benju questioned why award was made to Tru-Vac when this company was not included on an offeror list which DLA had sent out in July. DLA denied Benju's protest on October 13 and Benju protested the identical issues to our Office on October 20.

Benju's protest allegation concerning the use of negotiated rather than sealed bid procedures relates to an apparent solicitation impropriety which, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), must be filed prior to the closing date for the receipt of initial proposals. International Logistics Group, Ltd., B-223578, Oct. 24, 1986, 86-2 C.P.D. ¶ 452. Benju was provided with the basis for its next two allegations concerning the requested bid acceptance period extensions and the non-extension of the delivery schedule in July and August, when

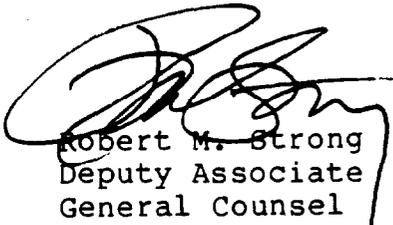
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DLA made the requests. Under our Regulations, 4 C.F.R. § 21.2(a)(2), protests of such issues must be filed within 10 working days after the basis for protest is known or should have been known. Benju's agency-level protest was untimely filed on September 28, more than a month after both the closing date and the dates on which Benju was made aware of the basis for its other protest allegations.

DLA did consider Benju's untimely protest and denied it. However, our Bid Protest Regulations provide that in order for us to consider a protest after an initial agency-level protest has been filed, the initial protest must have been timely filed with the agency. 4 C.F.R. § 21.1(a)(3). The fact that an agency considers an untimely agency-level protest does not waive GAO's timeliness requirements. Duracell U.S.A., B-225416, Jan. 7, 1987, 87-1 C.P.D. ¶ 27.

Benju's final question is based on its misreading or misunderstanding of the offeror list which it received from DLA. Tru-Vac did appear on this list--at the Minneapolis address where their production facility is located. DLA's award notice listed a Virginia address for Tru-Vac, which is the address of the company's local sales representative.

The protest is dismissed as untimely.


Robert M. Strong
Deputy Associate
General Counsel