



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Circon Acmi
File: B-229755
Date: January 19, 1988

DIGEST

Protest that award to selected contractor for medical equipment and supplies violates the Price Reduction Clause of the awardee's Federal Supply Schedule contract is dismissed as untimely where it was not filed within 10 working days after protester learned the basis for protest.

DECISION

Circon Acmi protests the award of a contract for medical equipment and supplies under solicitation No. DABT01-87-B-2159, issued by the Department of the Army on a brand name or equal basis. Circon contends that the award to Olympus Corporation was improper because the solicitation did not inform all potential bidders that discounts from the Federal Supply Schedule (FSS) prices would be considered. Circon further contends that Olympus may have violated the Price Reduction Clause of its FSS contract by offering a trade special (discount).

We dismiss the protest.

In its report on the protest, the Army states that on November 19, 1987, Circon telephoned the Army to obtain information on the status of the award. According to the Army's records, its contract specialist advised Circon that an award had been made to Olympus on November 18 and that "Olympus offered a Trade Special Discount of 25% and award was made in the amount of \$19,432.27." Although during that conversation Circon advised the agency that it was going to protest because it had not understood that it had the opportunity to offer a discount, Circon's written protest was not filed with us until December 8.

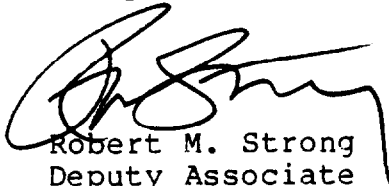
The Army argues that we should dismiss the protest as untimely because it was filed more than 10 working days after Circon learned of its basis of protest. In this regard, we note that under our Bid Protest Regulations, a

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protest based on other than an apparent impropriety in the solicitation must be filed within 10 working days after the protester knows the basis for protest. See 4 C.F.R. § 21.2(a)(2) (1987); Eastman Kodak Co., B-228908, Sept. 24, 1987, 87-2 CPD ¶ 298.

Here, the record shows that Circon was advised of the award to Olympus and its price terms on November 19 and therefore knew its basis for protest at that time. Since the protest was not filed until December 8, more than 10 working days after Circon knew its protest basis, the protest is untimely and will not be considered on the merits.

The protest is dismissed.



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