



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dixie Air Parts Supply, Inc.

File: B-230088

Date: April 11, 1988

DIGEST

1. Protest concerning firm's failure to receive solicitation materials is dismissed as untimely when not filed within 10 working days of time protester knew or should have known of basis for protest.
2. General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO Bid Protest Regulations where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

DECISION

Dixie Air Parts Supply, Inc. (Dixie), protests the award of a contract to Associated Aerospace Activities, Inc. (AAAI), under request for proposals (RFP) No. F34601-86-R-45648, and request for quotations (RFQ) No. FD2030-87-49751, issued by the Department of the Air Force (Air Force), Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, for turbine rotor bucket blades. Dixie protests its failure to receive the RFQ and amendments 002 and 003 to the RFP. We dismiss the protest as untimely.

The Air Force reports that there was only one known source of supply for the blades. RFP No. F34601-86-R-45648 was synopsised in the Commerce Business Daily (CBD) on December 16, 1985. By letter dated December 17, 1985, Dixie requested a copy of the RFP. The RFP was issued February 3, and on February 4, 1986, amendment 001 was issued to clarify first article test requirements. Amendment 002 was issued February 7, 1986, to delete a manufacturers code from the approved source list and incorporate it under the potential source list. Amendment 003 was issued February 14, 1986, to extend the closing date from March 5, 1986 to May 2, 1986.

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Because there was only one offer from the qualified source, AAAI, pricing assistance was requested. While that review was ongoing, a requirement for additional units was identified and synopsised in the CBD on September 4, 1986. When no inquiries were received from the second synopsis, the Air Force on January 23, 1987, combined the two requirements to gain a lower price and initiated negotiations with AAAI. A contract was awarded to AAAI on October 23, 1987, and reported in the CBD on November 9, 1987.

Dixie protested to our Office on January 26, 1988. Dixie reports that it received the RFP and the first amendment, but no others, and was unaware of the RFQ. Dixie protests that the Air Force's failure to furnish it with the RFP amendments and the RFQ precluded it from the opportunity to compete. Dixie notes that another potential offeror also received the RFP but did not receive the amendments or the RFQ, which, Dixie asserts, indicates a pattern of bias against prospective offerors.

Dixie's protest of its failure to receive amendments 002 and 003 to the RFP is untimely. Under our Bid Protest Regulations, a protest must be filed--defined as received at our Office--within 10 working days of when the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). Further, the protester must have diligently pursued the information forming the basis for the protest. If the protester failed to do so within a reasonable time, we will dismiss the ultimately filed protest as untimely. Adrian Supply Co.--Reconsideration; Western States Electric, Inc., B-227022.3 et al., Feb. 23, 1988, 88-1 CPD 184. Here, the record shows that during the period between receiving amendment 001, dated February 4, 1986, and January 1988, Dixie made no attempt to obtain from the agency information regarding this acquisition. Furthermore, a notice was published in the CBD on November 9, 1987, which announced that award had been made to AAAI under the protested solicitation. Thus, Dixie was on constructive notice of award and its basis of protest--that it had been excluded from participation in the procurement--on November 9. Id. We conclude that Dixie's protest of its failure to receive amendments 002 and 003 to the RFP was not filed within 10 working days of when Dixie should have known the basis of its protest and therefore we find it untimely.

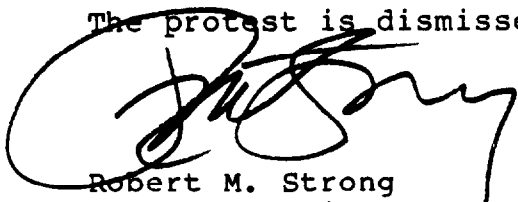
We also find untimely Dixie's protest of the nonreceipt of the RFQ. As stated above, to be timely, a protest must be received in our Office within 10 working days after the basis of protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). The September 4, 1986, synopsis of the RFQ stated that a

solicitation would be issued approximately September 19, 1986, with an approximate closing date of October 20, 1986 (the latter was extended to October 30, 1986). Since the CBD announcement listed October 20, 1986, as the closing date, Dixie should have been aware that to submit an offer it would need a copy of the solicitation by that date. In this respect, publication in the CBD constitutes constructive notice of the procurement action publicized. Marine Instrument Co., B-228462, Nov. 9, 1987, 87-2 CPD ¶ 468. When Dixie did not receive the solicitation by October 20, 1986, it was on notice of the basis for its protest and thus, should have raised the issue with our Office within 10 days thereafter. See Tobe Deutschmann Labs, Inc., B-221684, Jan. 28, 1986, 86-1 CPD 102. Dixie did not do so, however, and its protest to our Office therefore will not be considered.

Dixie requests that if we find its protest untimely, we consider its protest pursuant to the exception in our timeliness rules for a protest that raises a significant issue. See 4 C.F.R. § 21.2(c). This exception is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest to the procurement community and involves a matter that has not been considered on the merits in prior decisions. Delaware Eastwind, Inc., B-228533, Nov. 18, 1987, 87-2 CPD ¶ 494. Dixie's protest does not fall within this exception, since we have previously considered cases concerning a firm's failure to receive solicitation materials. See, e.g., NRC Data Systems, 65 Comp. Gen. 735 (1986), 86-2 CPD ¶ 84; Southern Technologies, Inc., B-228516, Jan. 21, 1988, 67 Comp. Gen. _____, 88-1 CPD 57.

Dixie has requested reimbursement for costs of filing and pursuing its protest. Since Dixie's protest is dismissed, there is no decision on the merits and, thus, no basis for the award of costs. Brownell & Company, Inc.--Request for Reconsideration, B-225784.4, Aug. 20, 1987, 87-2 CPD ¶ 182.

The protest is dismissed and the claim is denied.



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