



The Comptroller General
of the United States

Washington, D.C. 20548

Williams

Decision

Matter of: Systonetics, Inc.--Request for Reconsideration

File: B-231070.2

Date: June 3, 1988

DIGEST

1. The General Accounting Office affirms a decision dismissing a protest as untimely filed where oral complaint to contracting officer did not constitute timely agency-level protest since oral protests are no longer permitted under the Federal Acquisition Regulation. Therefore, written protest to the agency which was not filed within 10 working days of when the basis for protest is known is also untimely.

2. Although on reconsideration protester states that its objection to "generic nature" of solicitation's statement of work went to the "subjective evaluation" of its proposal, the General Accounting Office remains of the view that this protest ground concerns an alleged impropriety in the solicitation which was not timely filed and, therefore, that prior dismissal of protest was correct.

DECISION

Systonetics, Inc., requests reconsideration of our decision in Systonetics, Inc., B-231070, May 3, 1988, 88-1 CPD ¶ __, in which we dismissed its protest against any award of a contract under request for proposals (RFP) No. DAAB07-88-R-L808, issued by the United States Army Communications-Electronics Command.

We affirm our prior decision dismissing the protest.

We dismissed Systonetics' protest as untimely because its initial protest to the agency was filed more than 10 working days after the firm received notice that its proposal was rejected as technically unacceptable. We also dismissed the protester's allegation that the statement of work (SOW) in the RFP was vague since we considered that this allegation pertained to a solicitation defect that should have been raised prior to November 30, 1987, the closing date for receipt of initial proposals.

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On reconsideration Systonetics argues that our dismissal of its protest was improper because it orally complained to the contracting officer immediately upon receiving notice that its proposal was technically unacceptable, so that its subsequent protest to our Office, filed within 10 days of adverse agency action, is timely. According to the protester, the purpose of the "telephone dialogues" it had with the contracting officer was to comply with that provision of the Federal Acquisition Regulation (FAR) 48 C.F.R. § 33.102(b)(1), which encourages resolution of protests at the agency level before filing a protest with our Office. Thus, when the contracting officer did not resolve the protest, Systonetics asserts that its "verbal declaration of a protest was followed by written notification [to the contracting agency] as referenced in the protest to the GAO."

However, even if we were to assume that the protester orally protested the rejection of its proposal to the contracting officer within 10 working days after it knew the basis of protest, that oral complaint does not constitute a protest such that a subsequent protest to our Office would be timely. Contrary to the protester's belief, oral protests to contracting agencies are no longer permitted under the FAR. See FAR § 33.101; Paramount Systems, Inc., B-229648.2, Dec. 30, 1987, 87-2 CPD ¶ 646.

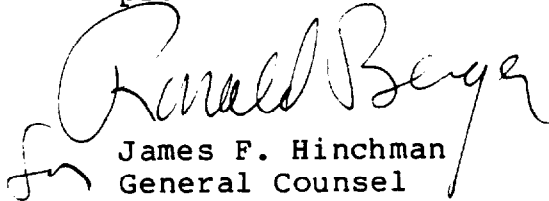
Under these circumstances, we affirm our decision that Systonetics' March 3, 1988 letter of protest to the contracting agency was untimely, since it was filed beyond the 10-day period permitted for filing under our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(3) (1988).

Systonetics further contends that our characterization of its protest against the "generic nature" of the SOW as a protest based on alleged solicitation improprieties is erroneous. The protester now states that the thrust of its objection to the alleged vagueness of the SOW is that it resulted in a "subjective evaluation" of its proposal; consequently, this protest ground was timely asserted and should be considered.

However, it is clear that the essence of this protest ground is Systonetics' continued dissatisfaction with the alleged vagueness in the solicitation even after clarification questions pertaining thereto were answered by the agency. Thus, it remains our view that the protester's allegations concerning the vague SOW provisions in the RFP constitute a protest based upon alleged solicitation improprieties which were apparent prior to the closing date for receipt of

initial proposals. As stated in our previous decision, a protest based on alleged solicitation improprieties is untimely where, as here, it is not filed until after the November 30, 1987 closing date for the receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1).

Accordingly, we affirm the dismissal of Systonetics' protest.


James F. Hinchman
General Counsel