

Bluth



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Process Equipment & Supply Co.--Reconsideration

File: B-231384.2

Date: June 16, 1988

DIGEST

1. Protest filed some 6 weeks after contract was awarded is properly viewed as untimely under Bid Protest Regulations in absence of an explanation from the protester as to why the protest is timely.
2. Where an offeror promises to comply with the requirements of a solicitation, a contention that the offeror will be unable to do so at the offered price constitutes an allegation that the offeror is not responsible; the General Accounting Office generally does not review affirmative determinations of responsibility.
3. Whether a product as delivered complies with contract requirements is a matter of contract administration, which is the responsibility of the procuring agency, not the General Accounting Office.

DECISION

Process Equipment & Supply Co. requests that we reconsider our dismissal of its protest of the award of a contract to Barney Corporation under request for quotations (RFQ) No. DLA700-88-T-D766, issued by the Defense Logistics Agency (DLA). We dismissed Process' protest as untimely because it appeared to have been filed more than 10 working days after Process became aware of the basis for protest. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). Process claims that it did, in fact, protest within the prescribed period.

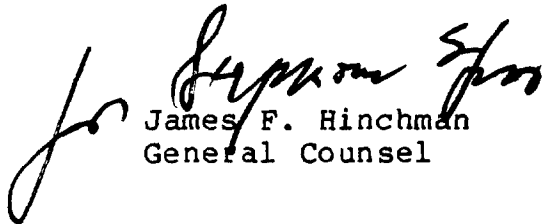
The protest was filed here on May 10, 1988. We were informed by DLA, however, that the contract was awarded on March 24, and because the protester provided no explanation as to why its protest some 6 weeks later was timely, we viewed it as untimely. The protester, although now asserting that it did protest within 10 days of when it learned of the basis for protest, again does not provide any

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explanation or factual basis for that assertion. Thus, we still have no basis to find the protest timely. See, e.g., Global Crane Institute--Request for Reconsideration, B-218120.2, May 28, 1985, 85-1 CPD ¶ 606.

In any event, even if the protest was timely it appears to involve matters we generally do not consider. The protester alleges that it would be impossible for Barney Corporation to furnish the product called for in the solicitation at the offered price and quantity. An awardee's ability to perform at its offered price, however, is a matter of responsibility, and our Office will not review an affirmative determination in that respect unless the protester shows possible bad faith or fraud on the part of the procuring officials, or that the awardee failed to meet a definitive responsibility criteria set out in the solicitation. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5); AJK Molded Products, Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96. Process has not alleged either of these exceptions. Additionally, whether the product actually delivered complies with the requirements of the contract awarded under the RFQ involves a matter of contract administration, which is the responsibility of the contracting agency, not our Office. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1).

Accordingly, we affirm the dismissal.


James F. Hinchman
General Counsel