



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Progressive Sheet Metal Co., Inc.
File: B-232440
Date: September 13, 1988

DIGEST

Where protester knew basis for its protest prior to filing a Freedom of Information Act (FOIA) request for information concerning the procurement, protest filed more than 10 working days after the basis of protest was known, even though within 10 working days of protester's receipt of information pursuant to FOIA request, is untimely.

DECISION

Progressive Sheet Metal Co., Inc., protests the award by the Navy of contract No. N62477-87-C-3698 to North American Construction Corporation for replacement of the HVAC system in building 901, Naval Ordnance Station, Indian Head, Maryland. We dismiss the protest.

Progressive maintains that the Navy improperly deleted from the challenged contract the requirement for removal of the existing roof on building 901 contained in the solicitation under which the contract was awarded. Progressive, in essence, contends that the contract as modified is so different from the contract for which the competition was held that the requirement should be resolicited.

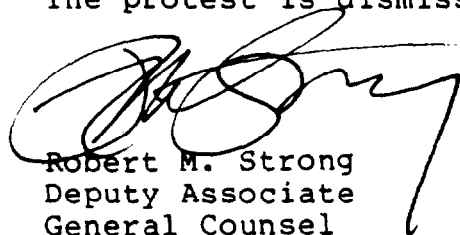
Progressive states that it learned of the modification to the contract at a meeting with the Navy on August 9 during which the details of the Navy's decision to delete the roof removal requirement were discussed. On August 10, Progressive filed a request under the Freedom of Information Act (FOIA) for a copy of the contract and related materials. Progressive states that on August 19, the contracting officer gave the firm access to much of the information it had requested. Progressive then filed its protest with our Office on August 29, challenging the modification to the contract.

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Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest involving other than an apparent solicitation impropriety must be filed within 10 working days after the basis for protest is or should have been known. Here, Progressive was on notice of the basis of its protest as of August 9, when, according to its own description, it was advised by the Navy of the details of the contract modification which Progressive now challenges. Since the protest was not filed until August 29, more than 10 working days after the August 9 meeting, the protest is untimely.

As noted above, the protest was filed within 10 days after Progressive's receipt on August 19 of certain materials relating to the contract which the firm had requested under FOIA. A protester's filing of an FOIA request does not toll our timeliness requirements, however, where, as here, the protest is based on information known to the protester prior to the filing of the request. Neal R. Gross and Co., Inc., B-229966, Mar. 24, 1988, 88-1 CPD ¶ 305, aff'd, B-229966.2, Apr. 18, 1988, 88-1 CPD ¶ 378.

The protest is dismissed.



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