



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Encon Management, Inc.
File: B-233329.2
Date: December 5, 1988

DIGEST

Where agency-level protest was not timely filed, subsequent protest to General Accounting Office is untimely.

DECISION

Encon Management Inc., requests reconsideration of our dismissal of its October 24, 1988 protest in which it argued that a contract had been formed between the U.S. Army Corps of Engineers (Corps) and Encon to provide assistance in field inspection and contract monitoring. Encon asserted that the Corps, in effect, had reneged on the contract, after Encon has incurred expenses to perform the contract.

Because the protest letter was inartfully worded, we interpreted the protest as concerning the administration of an existing contract and as a possible dispute under the contract for resolution under the contract's disputes clause. We therefore dismissed it as being outside the scope of bid protest function. For example, in its protest, Encon stated that the subject of the protest was "the removal of its contract for field services." The protester also asserted that Encon was "given a contract to perform the required services." Finally, the protester stated that "in any court of law, [the Corps] had issued a field service contract for [Encon's] implementation." Accordingly, we dismissed Encon's protest as a matter concerning contract administration. 4 C.F.R. § 21.3(m)(1) (1988).

Encon now explains in its November 14, 1988 request for reconsideration that it actually protests the improper and

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unreasonable cancellation of the procurement action. Based on the information contained in Encon's request for reconsideration, we consider this matter as a new protest raised for the first time in this submission, and we dismiss the protest as untimely.

The proposed contract was to be awarded in accordance with the procedures prescribed in the Brooks Act for procurement of professional architectural and engineering services. See 40 U.S.C. §§ 541-544 (1982). Encon had been selected as the most highly qualified firm to provide the requested services, and the Corps apparently contemplated making award to that firm. However, the protester's submissions indicate that Encon was advised on August 12, 1988 that the proposed procurement had been canceled. In a letter dated August 29, which was not furnished by the protester, Encon apparently requested that the contracting agency review the cancellation of the intent to award the contract. The protester received the agency's response on October 10 which states that the decision to cancel the procurement was based on the Corps' reduced workload and a determination that an in-house workforce could perform the required services.

Our Bid Protest Regulations provide that protests based on other than apparent solicitation improprieties must be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Our regulations further state that if a protest has been filed initially with the contracting agency, any subsequent protest to our Office will be considered timely, if the initial protest to the agency was filed timely. 4 C.F.R. § 21.2(a)(3) (1988).

If we consider Encon's August 29 letter to the Corps as an agency-level protest as Encon alleges, Encon is untimely under our regulations. The earliest that the letter could have been filed, that is, received by the Corps as a protest, was August 29, the date of the letter. Even assuming that is the case, Encon did not file its protest within 10 working days after the basis of its protest was known on August 12, when Encon was advised of the cancellation of the procurement. Since a protest which was initially untimely filed with the contracting agency is untimely when subsequently filed with our Office, Encon's protest is untimely filed. Tioga Pipe Supply Company, Inc., B-230040, Feb. 24, 1988, 88-1 CPD ¶ 190.

In any case, a contracting agency has broad discretion to determine when it is appropriate to cancel a procurement conducted under Brooks Act procedures and may do so by establishing a reasonable basis for the cancellation.

Parkey & Partners Architects, B-217319, Mar. 22, 1985, 85-1 CPD ¶ 336. Here, the Corps stated that the agency's needs changed and that the Corps no longer required the services the contract would have provided. Specifically, the Corps indicated that it would be able to perform the reduced requirements by using its in-house staff. Our Office often has held that an agency may cancel a procurement where the goods or services are no longer required. Billings American Indian Council, B-228989, B-228989.2, Dec. 29, 1987, 87-2 CPD ¶ 639.

Accordingly, the protest is dismissed.

Ronald Berger

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