



Comptroller General
of the United States

Washington, D.C. 20548

Form 100

Decision

Matter of: Northwest Piping, Inc.

File: B-233796.2

Date: October 24, 1989

DIGEST

Protester's allegation that bid should be rejected because individual sureties on awardee's bid bond do not own the assets claimed on their affidavits of individual surety is untimely where protester waited several months after it became aware of agency letter containing information concerning the assets and after it should have known that the agency was not going to act on the information to file Freedom of Information Act request seeking the details upon which it has based its protest.

DECISION

Northwest Piping, Inc., protests the award of a contract to R&D Construction under invitation for bids (IFB) No. RDSA00-0638, issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for road construction on the Cheyenne River Indian reservation in Ziebach County, South Dakota. Northwest argues that the individual sureties listed on R&D's bid bond are unacceptable because the sureties do not own the assets they claim on their affidavits of individual surety, and that the agency knew of this by February 1989 and refused to reject the bid bond. The protester therefore argues that the agency acted improperly because it did not reject R&D's bid.

We dismiss the protest.

Northwest first protested the award of a contract to R&D under the subject IFB on December 7, 1988. In relevant part, Northwest also at that time contended that R&D's bid should have been rejected because the net worths of the individual sureties on R&D's bid bond were inadequate. In Northwest Piping, Inc., B-233796, Mar. 30, 1989, 89-1 CPD ¶ 536, we denied the protest, concluding in relevant part

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that the record failed to establish that the agency's acceptance of R&D's individual sureties was unreasonable or was the result of bad faith.

In this second protest, filed June 19, 1989, Northwest again argues that R&D's bid should have been rejected, contending that the net worths of the individual sureties on R&D's bid bond were inadequate on the basis that the sureties do not own the real estate they claim as their primary asset on their affidavits of individual surety. Northwest contends that because this second protest is based on information which it alleges it was unaware of during the pendency of its initial protest, and only became aware of as the result of its May 25 Freedom of Information Act (FOIA) request, its protest is timely because it was filed within 10 working days of its receipt of that information.

This information consists primarily of a letter dated January 31, 1989, from the Bureau of Land Management (BLM), to BIA, which states that the real estate claimed as the primary asset by the individual sureties on R&D's bid bond may be owned by the federal government. In addition, the protester found out that BIA asked BLM for further information and in the end failed to act on the information that it received.

We agree with the agency that the protester was or should have been aware of its basis of protest long before it filed its FOIA request.

Our Bid Protest Regulations provide that protests shall be filed not 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) (1989). A protester's failure to pursue a matter diligently by seeking necessary information within a reasonable time will result in dismissal of its protest as untimely. Fairchild Weston Sys., Inc., B-229843.2 et al., June 3, 1988, 88-1 CPD ¶ 525.

The record shows that Northwest had made the allegation that the land claimed to be owned by R&D's sureties was actually owned by the federal government orally to the BIA in mid-January 1989, and had given BIA the name of an individual at BLM who Northwest claimed would provide information substantiating this allegation. The record also indicates that BIA informed Northwest of its receipt of the January 31 letter from BLM, which stated that the land claimed to be owned by R&D's sureties may, in fact, be owned by the federal government. Additionally, in its comments on the agency report dated February 2, filed by Northwest during its first protest, Northwest essentially detailed the

contents of the January 31 letter from the BLM and demanded that a further investigation based on this information be conducted by BIA. In sum, it appears that Northwest became aware of the existence and contents of the January 31 letter on which its current protest is predicated some time around that date. Further, since our decision denying its protest was issued on March 30, 1989, and the agency took no further action regarding the bonds, it was not reasonable for the protester to wait until May 25 to file its FOIA request in order to attempt to discover the details behind the agency's failure to act. Moreover, Northwest's current protest does not indicate that the relevant information it received pursuant to that FOIA request was information of which it was not already aware. Therefore, we believe that Northwest did not diligently pursue the information it thought necessary to obtain in order to file this current protest, and we view the protest as untimely filed. Fairchild Weston Sys., Inc., B-229843.2 et al., supra.

The protest is dismissed.



Ronald Berger
Associate General Counsel