



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: WildCard Associates
File: B-241295; B-241300
Date: October 19, 1990

Daisy E. Coleman for the protester.
Barbara C. Coles, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protests that agency improperly canceled solicitations are dismissed as untimely where protester filed agency-level protests more than 10 working days after the protester was notified about cancellations of the solicitations.

DECISION

WildCard Associates protests the United States Army Corps of Engineers' cancellation of request for proposals (RFP) No. DACW62-89-R-0015 (RFP-0015) and the subsequent cancellation of RFP No. DACW62-90-R-0042 (RFP-0042). WildCard essentially contends that the solicitations were canceled in bad faith and that it is entitled to reimbursement of its proposal preparation costs.

We dismiss the protests as untimely.

RFP-0015 called for the successful offeror to conduct a commercial activity study for routine maintenance for six navigation locks. On April 26, 1990, the agency informed WildCard that it had rejected all the proposals submitted in response to RFP-0015 due to a significant increase in the scope of work. The agency also advised WildCard that a new proposed study for lock operations and routine maintenance would be resolicited.

On June 1, the agency issued RFP-0042 and set July 3 as the closing date for receipt of proposals. Prior to the closing date, the agency amended the solicitation by extending the closing date to July 10. On July 23, the agency returned WildCard's proposal unopened and indicated that the solicitation had been canceled. Wildcard submitted an invoice to the agency on August 6, requesting that it be reimbursed its costs of preparing proposals under both RFPs. By letter

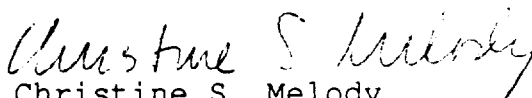
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dated August 8, the Army advised WildCard that there was no basis on which to pay such costs because the RFPs were properly canceled. On August 23, WildCard lodged an agency-level protest, again requesting reimbursement of its proposal preparation costs. The Army responded by letter dated September 6, reiterating its previous position. Wildcard then filed the protests with our Office on September 24.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), a protest concerning other than a solicitation impropriety must be filed either with the contracting agency or our Office no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. Where, as here, a protest is first filed with the contracting agency, a subsequent protest to our Office will be considered timely if it is filed within 10 working days of the date the protester learns of the initial adverse agency action on the agency-level protest, but only if the initial protest to the agency was timely. 4 C.F.R. § 21.2(a)(3). The fact that the agency considers an untimely protest on the merits does not alter this result; our timeliness regulations may not be waived by action or inaction on the part of the contracting agency. Hooven Allison, B-224785, Oct. 10, 1986, 86-2 CPD ¶ 423.

As noted above, WildCard did not file its agency-level protest until August 23, almost 4 months after the firm was notified that RFP-0015 was canceled and 1 month after it was notified that RFP-0042 was canceled.^{1/} Since our Regulations, as noted above, require that such protests be filed with the agency or our Office within 10 days of the date the basis of protest was known or should have been known, WildCard's protest to the agency was untimely. As a result, notwithstanding the fact that the agency considered the untimely protest on its merits, Wildcard's September 24 protests to our Office are also untimely. Hooven Allison, B-224785, supra.

The protests are dismissed.


Christine S. Melody
Assistant General Counsel

^{1/} The August 6 invoice WildCard submitted to the Army clearly did not constitute a protest. See Finalco, Inc., B-220651, Jan. 2, 1986, 86-1 CPD ¶ 4.