

Pietrovito
43505



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

Decision

Matter of: Mead Data Central

File: B-242598

Date: March 26, 1991

Gerald E. Yung for the protester.
Kerry L. Miller, Esq., United States Government Printing Office, for the agency.
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency-level protest, and subsequent protest to the General Accounting Office, of an alleged solicitation impropriety are untimely where the agency-level protest was transmitted by facsimile machine to the procuring agency on the closing date at the exact time set for the receipt of proposals but was not received until after the time set for receipt of proposals.
2. Untimely protest that solicitation terms provide the contractor with unfair and early use of Federal Energy Guidelines in violation of public information dissemination laws and policy is not an issue of widespread interest to the procurement community justifying invocation of the significant issue exception to the General Accounting Office timeliness requirements.

DECISION

Mead Data Central protests the provisions of request for proposals (RFP) No. Program 651-S, issued by the United States Government Printing Office (GPO) for automatic electronic publishing of the Federal Energy Guidelines.^{1/} Mead Data contends that the RFP adversely affects public access to government data by giving the Program 651-S contractor early and unfair use of the data to be published.

^{1/} The Federal Energy Guidelines are a system of loose leaf manuals produced by the Federal Energy Regulatory Commission (FERC) that consist of FERC's opinions and orders, statutes, regulations, and other information related to the pricing, production, and transportation of natural gas, oil pipelines, and electric power.

We dismiss the protest as untimely.

The RFP contemplated the award of a no-cost or minimal-cost contract for publishing services, including editorial preparation, data capture and file creation, maintenance of a "loose leaf" database management system, photocomposition of text pages, and printing and binding. Offerors were informed that the Program 651-S contractor may sell, in machine-readable or telecommunicated form, the weekly updated material.

The closing date for receipt of proposals was stated to be not later than 2:00 p.m., December 14, 1990. By facsimile (FAX) transmission of December 14, 1990, Mead Data protested to GPO that under the RFP the contractor would have unfair access to the Federal Energy Guidelines data under a no-cost or minimal cost contract. The "faxed" agency-level protest was marked by Mead Data's FAX machine as transmitted by the protester at 2:00 p.m. from Dayton, Ohio, and was marked by GPO's FAX machine as received at 1:57 p.m. in Washington, D.C.^{2/} GPO dismissed as untimely Mead Data's agency-level protest on December 21, and Mead Data protested to our Office on January 11, 1991, within 10 working days of receipt of GPO's decision.

GPO argues that Mead Data's agency-level protest concerns an alleged apparent solicitation impropriety, which was untimely received after the 2:00 p.m. closing date for receipt of proposals, and that, therefore, Mead Data's subsequent protest to our Office is untimely. GPO states that on December 18, 4 days after receipt of the agency-level protest, the agency checked the accuracy of its FAX machine's clock against the U.S. Naval Observatory Master Clock and found that the FAX machine was 4 minutes slow so that Mead Data's protest must have been late.

Mead Data does not dispute that its protest concerns an alleged apparent solicitation impropriety, but argues that GPO's FAX time/date stamp is prima facie evidence of the date and time when the agency received the agency-level protest, and its protest is therefore timely.

Our Bid Protest Regulations require that protests, based upon alleged apparent solicitation improprieties, be filed prior to bid opening or the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1991). A protest of an alleged apparent solicitation impropriety that is filed on the bid

^{2/} Both Dayton and Washington are in the Eastern Standard Time zone.

opening or closing date must be filed prior to the exact time set for bid opening or the receipt of proposals. Southern Methodist Univ., B-187737, Apr. 27, 1977, 77-1 CPD ¶ 289. A protest is considered "filed" under our Bid Protest Regulations when it is received by our Office or the agency (in the case of an agency-level protest). See Custom Programmers Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245. This requirement is intended to enable the procuring agency to decide an issue while it is most practicable to take effective corrective action where the circumstances warrant. Ratcliffe Corp.--Recon., B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395.

Mead Data's agency-level protest was not timely filed prior to the time set for the receipt of proposals. While Mead Data argues that we should not consider the agency's evidence that its FAX machine's clock was slow and that we should accept GPO's FAX time/date stamp as conclusive of the date and time on which its agency-level protest was filed, Mead Data does not dispute that its own FAX machine indicated that the agency-level protest was not transmitted until 2:00 p.m. Since the FAX transmission of Mead Data's protest must necessarily have taken some time, we conclude that Mead Data's protest could not have been filed/received prior to the 2:00 p.m. time set for receipt of proposals. Mead Data commenced transmission of this FAX protest sometime between 2:00 p.m. and 2:01 p.m. It is reasonable to assume that the transmission of Mead Data's two page FAX could take 1 minute. Therefore, we find reasonable GPO's argument, which is supported by affidavit, that Mead Data's agency-level protest was not actually received by its FAX machine until 2:01 p.m., 4 minutes later than the agency's time/date stamp.

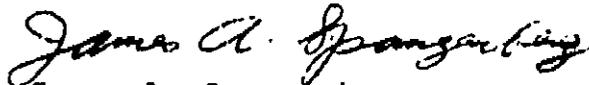
Accordingly, since Mead Data's agency-level protest was not timely filed by the closing time for receipt of proposals, its subsequent protest of this alleged apparent solicitation impropriety to our Office, after the dismissal of its agency-level protest, is not timely. 4 C.F.R. § 21.2(a)(3). Mead Data argues, however, that we should consider the protest under the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(b).

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Lucas Place, Ltd.--Recon., B-238008.3, Sept. 4, 1990, 90-2 CPD ¶ 180. We may, in a given case, invoke the significant issue exception to our timeliness rules when, in our judgment, the circumstances of the case are such that our consideration of the protest would be in the best interest of the procurement system. DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. ____, 90-2 CPD ¶ 310. In order to prevent our timeliness requirements from becoming meaningless,

we will strictly construe and seldom use the significant issue exception, limiting it to protests that raise issues of widespread interest to the procurement community, see Golden North Van Lines, Inc., B-238874, July 17, 1990, 69 Comp. Gen. ____ , 90-2 CPD ¶ 44, and which have not been considered on the merits in a previous decision, Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490.

We do not find that Mead Data's protest presents a significant issue. The crux of Mead Data's protest is that the RFP will allegedly provide the Program 651-S contractor with an early and unfair use of Federal Energy Guidelines data that the contractor can later sell to the public and that this violates public information dissemination laws and policy. While early access to the information, which will later be made available to the public by the government, may be of concern to firms that are in the business of disseminating agency information, this does not present an issue of widespread interest to the "procurement community."

The protest is dismissed.



James A. Spangenberg
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