



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ferg N Sons Plastics, Inc.--Reconsideration
File: B-246785.2
Date: December 30, 1991

John Ferguson for the protester,
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Reconsideration of a protest, which was dismissed as untimely because the protest indicated that it was filed more than 10 working days after the protester was verbally apprised of its bases for protest, is denied; the protester may not, on reconsideration, introduce for the first time information upon which the protester's assertion of its protest's timeliness relies, where the initial protest was untimely on its face.

DECISION

Ferg N Sons Plastics, Inc. requests reconsideration of our dismissal of its protest against the General Services Administration's (GSA) award of a federal supply schedule contract to Halsey, Inc. under solicitation No. 7FXG-T3-7326S, a total small business set-aside, for mess trays.

The request for reconsideration is denied.

In its protest, Ferg N Sons contended that GSA improperly awarded the contract to a higher priced offeror and improperly delayed making the award. We dismissed the protest because the protest submission indicated that the protest was untimely filed more than 10 working days after the protester knew or should have known of its bases for protest. 4 C.F.R. § 21.2(a)(2) (1991).

Ferg N Sons stated that a GSA employee advised it on November 1, 1991, of the award to Halsey, a small business concern. There was no reference in the protest letter to Ferg N Sons's subsequent receipt of any further information on which the protest was based. Thus, the protest indicated that on November 1 the protester knew its chosen grounds of

protest--the award to Halsey, and the amount of time that GSA had taken to make the award.

Our Bid Protest Regulations require that a protest alleging other than solicitation improprieties be filed no later than 10 working days after the basis for protest is known or should have been known, whichever is earlier, 4 C.F.R. § 21.2(a)(2). The November 1 oral notice that indicated the bases of Ferg N Sons's protest was sufficient to start the 10-working-day period running; a protester may not delay filing its protest until receipt of written confirmation of the rejection of its proposal. Blinderman Constr. Co., Inc., B-222523, June 16, 1986, 86-1 CPD ¶ 554. Since Ferg N Sons learned the basis of its protest on November 1, the protest should have been filed (received) in our Office by November 18. Because the protest dated November 20 was not filed until November 25, the protest was untimely. Eastman Kodak Co., B-228908, Sept. 24, 1987, 87-2 CPD ¶ 298.

In requesting reconsideration, Ferg N Sons explains that GSA did not provide written notice of the award or the specific reason why its lower offer was rejected (i.e., Ferg N Sons's use of a large business supplier) until November 18. The protester admits having heard "rumors that Halsey had protested my bid because of my supplier" some time before filing a protest.

Our Bid Protest Regulations provide that:

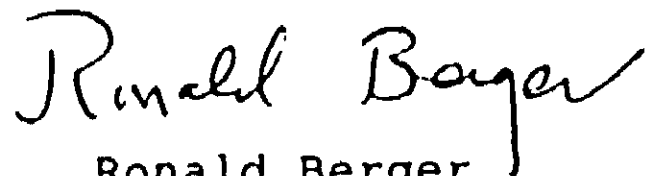
"Protests which are untimely on their face may be dismissed. It is the protester's obligation to include in its protest all the information needed to demonstrate its timeliness and protesters will not be permitted to introduce for the first time in a request for reconsideration filed pursuant to § 21.12 the information upon which the timeliness of the protest relies." 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.2(b)).

When Ferg N Sons filed its protest, it apparently possessed the facts upon which it now relies in establishing the timeliness of the protest--that is, the receipt of a letter from the agency detailing why its proposal was rejected--but failed to mention these facts in its protest. Under our Regulations, the protester may not introduce for the first time in its reconsideration request the information upon which its assertion of its protest's timeliness relies where the protest was untimely on its face. See Management Eng'g Assocs.--Recon., B-245284.2, Oct. 1, 1991, 91-2 CPD ¶ 276. Since Ferg N Sons did not establish its timeliness in its initial protest and instead stated facts that indicated the

protest was untimely filed, its initial protest was properly dismissed as untimely. Id.

In any case, we note that Ferg N Sons never specifically challenges the reason its offer was rejected--that is, that it improperly offered a product manufactured by a large business concern on this small business set-aside procurement. Since offers of large business products on small business set-asides should be rejected, see Federal Acquisition Regulation § 19.102(f)(1), Ferg N Sons has stated no facts on which we would sustain its protest. 4 C.F.R. § 21.3(m).

The request for reconsideration is denied.



Ronald Berger
Associate General Counsel