



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Foxbro Systems, Inc.

File: B-245088; B-245089; B-245090

Date: September 13, 1991

Rodney W. Fox for the protester.
Craig E. Horje, Esq., and Lynn M. Sturges, Esq., Department
of the Army, for the agency.
Glenn Wolcott, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest challenging cancellation of solicitation is untimely when filed more than 10 days after protester knew the basis for its protest.
2. Allegation that agency is acquiring material with the intention of using it in conjunction with an improper modification of another existing contract does not state a valid basis for protest.

DECISION

Foxbro Systems, Inc., protests the Department of the Army's actions in connection with solicitation Nos. DAAA31-91-B-0010, DAAA31-91-R-0020, and DAAA31-91-R-0021 (hereinafter "-0010," "-0020," and "-0021," respectively). Foxbro alleges that the Army improperly canceled solicitation No. -0010, and that it intends to use the products sought under solicitation Nos. -0020 and -0021 in conjunction with an improper modification of an existing contract with another contractor.

We dismiss the protests.

BACKGROUND

On April 1, 1991, the Army issued solicitation No. -0010, seeking bids for the installation of a "quick react deluge system" in building No. 126 at the McAlester Army Ammunition Plant (MAAP), McAlester, Oklahoma. The installation of a deluge system necessitates closure of the building while it is taking place. On May 13, bids under solicitation No. -0010 were opened and Foxbro was determined to be the apparent low

bidder. On June 20, the contracting officer was notified by the Chief of the Ordnance Engineering Division that the Army had determined that MAAP building No. 126 could not be closed due to a new requirement to renovate 27,000 rounds of 8-inch ammunition, for which the availability of building No. 126 was needed. MAAP canceled solicitation No. -0010 and Foxbro was notified of the cancellation on June 20, 1991.

On July 5, 1991, the Commerce Business Daily (CBD) published a notice of MAAP's intent to purchase 63 valves and nozzles for a building sprinkler system from ASCOA Fire Systems on a sole-source basis under solicitation No. -0020. On July 8, the CBD published a notice of MAAP's intent to similarly purchase a fire detection system from Detector Electronics Corporation under solicitation No. -0021.

In its protest, Foxbro acknowledges that "Detector Electronics and ASCOA are the only two manufacturers of [the products sought under solicitation Nos. -0020 and -0021]" and Foxbro does not suggest that it or other vendors could compete as alternative sources for the products sought. Rather, Foxbro states that it finds it ironic that it would have acquired and installed the exact quantities of the equipment sought under solicitation Nos. -0020 and -0021 as part of its performance under the canceled solicitation, No. -0010, and protests that it believes the Army "intends to . . . extend an existing contract [with another contractor] . . . to include the installation of the equipment [in building No. 126]." Accordingly, Foxbro protests that MAAP's cancellation of solicitation No. -0010 and its subsequent issuance of solicitation Nos. -0020 and -0021 were improper.

The Army expressly denies Foxbro's allegation that it intends to install the equipment in Building No. 126 by modifying an existing contract and states that the additional items being acquired under solicitation Nos. -0020 and -0021 will be used to construct deluge systems in MAAP building Nos. 172 and 174, using in-house labor. The Army further states that Foxbro may yet be awarded a contract for the work contemplated under solicitation No. -0010 when building No. 126 becomes available for installation of a deluge system.

CANCELLATION OF SOLICITATION NO. -0010

Foxbro acknowledges that it received the Army's notification regarding cancellation of solicitation No. -0010 on June 20, 1991, and states that it learned of the issuance of solicitation Nos. -0020 and -0021 on July 6 and July 8, respectively. Nonetheless, Foxbro did not file its protests with our Office until August 1, 1991.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, a protest alleging improper cancellation of a solicitation must be filed no later than 10 working days after the protester knew or should have known of the basis for the protest. 4 C.F.R. § 21.2(a)(2) (1991). 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. The rules are strictly construed to prevent them from becoming meaningless. Air Inc.--Request for Recon., B-238220, Jan. 29, 1990, 90-1 CPD ¶ 129.

Since Foxbro knew of its basis for challenging the Army's cancellation of solicitation No. -0010 more than 10 days prior to filing its protest with our Office, its protest challenging the cancellation is dismissed. 4 C.F.R. § 21.2(a)(2).

ISSUANCE OF SOLICITATION NOS. -0020 AND -0021

Foxbro's protest against the Army's issuance of solicitation Nos. -0020 and -0021 is based solely on Foxbro's belief that the government intends to purchase the equipment for installation in Building No. 126 through the means of extending an existing contract with another contractor to include installation of the equipment.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Mgmt. Servs., Inc.--Request for Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. Protests that merely anticipate improper agency action are speculative and premature and provide no basis for consideration by our Office. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512.

Foxbro's allegation that the issuance of solicitation Nos. -0020 and -0021 is improper because Foxbro believes that the agency intends to take future improper action using the items being acquired under these solicitations does not provide a basis for us to consider the protests.

The protests are dismissed.


Paul I. Lieberman
Assistant General Counsel