



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: L&L Oil Company, Inc.

File: B-246560

Date: March 9, 1992

Marcus B. Slater, Jr., Esq., Fort & Schlefer, for the protester.

Rodney P. Holland for Midstream Fuel Service, Inc., an interested party.

Louise Hansen, Esq., Defense Fuel Supply Center, for the agency.

C. Douglas McArthur, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency deprived protester of an opportunity to compete because it failed to furnish a copy of the solicitation is dismissed as untimely where procurement was synopsisized in the Commerce Business Daily, and the protester did not file a protest with either the contracting agency or with the General Accounting Office within 10 working days of the closing time specified in the synopsis.

2. Protest against solicitation provision is dismissed as untimely where filed after the time for receipt of initial proposals; circumstances do not indicate that failure to file timely protest arose from good cause or that protest against award factors in the solicitation constitutes significant issue, such that General Accounting Office will consider the protest despite its untimeliness.

DECISION

L&L Oil Company, Inc. (L&L) protests the award of a contract under request for proposals (RFP) No. DLA600-91-R-0114, issued by the Defense Fuel Supply Center (DFSC), for supply of fuel oil in the Gulf Coast/South Atlantic/Caribbean area.

The protester complains that the agency did not provide it with a copy of the solicitation and alleges that the solicitation's evaluation factors are inadequate.

We dismiss the protest.

On June 26, 1991, the Commerce Business Daily (CBD) published notice that the agency was issuing a solicitation for procurement of various grades of fuel oil for ships' bunkers in various locations for Domestic Bunkers Program 3.7 for calendar years 1992 and 1993, with a closing date of August 20, 1991. The agency issued the solicitation on July 22 for requirements for Navy, Coast Guard, Army, and federal civilian agency vessels in the Gulf Coast/South Atlantic/Caribbean area for 1992 and 1993.¹

The agency states that in March, it had revised the protester's address on the Bidders' Mailing List but had mistakenly entered the zip code for the protester's old address, a post office box in Metairie, Louisiana. The agency mailed a copy of the solicitation to the protester's correct address in Metairie but with the old 70002-6984 zip code corresponding to L&L's post office box 6984 in Metairie.²

The agency received initial proposals on August 20 and still was in the process of evaluating them for award when, on October 8, representatives of the protester called DFSC concerning follow-on awards for items for which the protester had a current contract. On October 17, L&L filed a protest with the contracting agency against any award for 11 of the solicitation line items, including 7 items for which it was the incumbent contractor, alleging that its failure to submit an offer was attributable to the agency's failure to provide it with a copy of the solicitation. The agency denied the protest on October 31, and this protest to our Office followed.

Where, as here, a contracting agency properly has synopsisized a proposed procurement in the CBD, a potential contractor is on constructive notice of the solicitation and its contents and has a duty to make reasonable efforts to obtain a copy of the solicitation in order to ensure that it is included in the competition. Do-Well Serv. & Supplies, Inc., 70 Comp. Gen. 187 (1991), 91-1 CPD ¶ 48. When the protester failed to receive a copy of the solicitation by the

¹The agency states that it issues a solicitation for these requirements in late July or August of every odd-numbered year; the protester has been a contractor with DFSC since 1979.

²According to information from the Post Office provided by the agency, the Post Office would have notified the boxholder of any correspondence, or if the correspondence did not carry the boxholder's name, would look up the zip code in the national directory and forward it to the addressee.

August 20 date specified in the CBD synopsis, the last day on which it could have successfully submitted an offer, it was on constructive notice that it had not been solicited, which is the basis for its protest. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991), a protest concerning other than an apparent impropriety in the solicitation must be filed with the contracting activity or our Office within 10 working days after the protester knew or should have known the basis of its protest. Our regulations further provide that a matter initially protested to the contracting agency will be considered by our Office only if the initial protest to the agency was filed timely. 4 C.F.R. § 21.2(a)(3). L&L's protest to the agency of October 17, approximately 8 weeks after the closing time, was untimely. Although the protester subsequently filed a protest of the agency's decision denying this protest with our Office, its protest was untimely under the above standard. Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

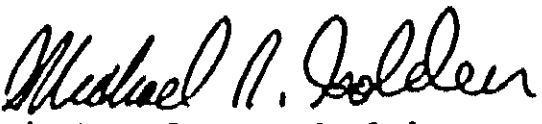
L&L also protests the terms of the solicitation, contending that the solicitation does not state a basis for award as required by Federal Acquisition Regulation §§ 15.406-5(c) and 15.605(e) (FAC 90-7). This portion of the protest also is untimely. As we stated above, the CBD notice placed the protester on constructive notice of the solicitation, its contents, and the closing time. Protests against alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time, 4 C.F.R. § 21.2(a)(1); L&L's protest, filed 11 weeks after receipt of initial proposals, is untimely.

The protester asks that we consider this issue under section 21.2(c) of our regulation, by which our Office may consider an untimely protest for good cause shown or where it determines that the protest raises issues significant to the procurement system.

These exceptions are strictly construed and rarely used. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. Regarding the good cause exception, even if we accepted the protester's contention that the agency's failure to supply it with a copy of the solicitation prevented it from filing a protest, the record shows that the protester waited nearly a month--from October 11 until November 6--after receiving a copy of the solicitation before raising the issue with our Office. Nor do we find this issue significant within the meaning of our regulation where we have addressed an issue, such as this one relating

to the meaning of the phrase "other factors" in the award provisions of the contract, in numerous prior decisions, DynCorp, 70 Comp. Gen. 38 (1990), 90-2 CPD ¶ 310; see, e.g., Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

The protest is dismissed.


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