



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DGS Contract Services, Inc.

File: B-249845.3

Date: February 9, 1993

Rickie Day for the protester,
Scott H. Riback, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly failed to amend solicitation to provide that contract's basic period would be for 12 months from time of award (rather than for 8-month period remaining in originally-contemplated base period) is dismissed as untimely because it was filed after bid opening.

DECISION

DGS Contract Services, Inc. protests the terms of invitation for bids (IFB) No. DABT10-92-B-0091, issued by the Department of the Army for the rental and maintenance of washers and dryers at Fort Benning, Georgia. DGS argues that the Army has improperly refused to amend the period of performance for the basic contract.

We dismiss the protest.

The IFB originally contained a bid opening date of August 25, 1992, and provided for performance of a basic contract from October 1 through September 30, 1993. On August 13, 1992, DGS filed a protest in our Office objecting to various portions of the solicitation. As a consequence, the Army postponed bid opening until resolution of DGS' protest, which we denied on December 23. DGS Contract Servs., Inc., B-249845.2, Dec. 23, 1992, 92-2 CPD ¶ _____. After receiving our decision, the Army scheduled and conducted bid opening on January 8, 1993, and DGS was the apparent low bidder. DGS filed its current protest in our Office on February 2.

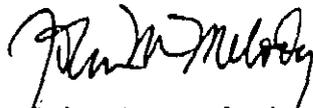
DGS argues that the agency orally represented prior to bid opening that it would adjust the period of performance under the basic contract so that it would run for 12 months, even though bid opening occurred approximately 4 1/2 months later than it was originally scheduled and approximately 3 months

after the originally-contemplated award date of October 1, 1992, DGS maintains that, after bid opening, the agency improperly decided not to adjust the period of the basic contract, resolving instead to have performance run for only 8 months or until September 30. (DGS also filed a supplemental letter of protest in our Office on February 3, alleging the same bases for protest but styling the letter a "post award" protest because the Army had made award to it.) DGS states that the Army's decision is prejudicial to it because it formulated its bid prices on the assumption that the basic contract would run for the full 12 months.

We find the protest untimely. Protests concerning alleged improprieties apparent on the face of a solicitation must be filed in our Office prior to the time set for bid opening. 4 C.F.R. § 21.2(a)(1) (1992). The IFB here clearly provided that performance under the basic contract would begin on October 1, 1992, or the date of award if later, and end on September 30, 1993. The IFB thus provided that the basic contract would be of a shorter duration than originally contemplated if award were not made on October 1. Since award did not in fact occur on that date, DGS knew that the basic contract would be shorter than 12 months prior to the January 8 bid opening date. Thus, to the extent that DGS was concerned that, by virtue of this provision, the basic contract would be for less than 12 months, it was obliged to protest prior to the bid opening. DGS was not relieved of this obligation through the contracting agency's alleged oral advice to the contrary; it should have protested the provision before bid opening and requested that the agency amend the IFB in writing. See Simpson Contracting Corp., B-238279, Feb. 8, 1990, 90-1 CPD ¶ 165. The protest thus is untimely.

To the extent that DGS is protesting the agency's refusal to modify its contract to provide for a 12-month basic period, it is not for our consideration; contract modifications are matters of contract administration. 4 C.F.R. § 21.3(m)(1).

The protest is dismissed.



John M. Melody
Assistant General Counsel