



Comptroller General
of the United States

Washington, D.C. 20548

Decision

7-7-84

Matter of: Clamshell Buildings, Inc.--Reconsideration

File: B-250520.2

Date: April 13, 1993

Hassel "Bud" Hill, Jr., Esq., for the protester, John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest argument based on information contained in the agency report was properly dismissed as untimely where the argument was made more than 10 working days after receipt of the report; fact that extension was granted for filing report comments does not waive timeliness requirements.

DECISION

Clamshell Buildings, Inc. requests reconsideration of our decision in Clamshell Bldgs., Inc., B-250520, Dec. 11, 1992, 92-2 CPD ¶ 408, in which we dismissed as untimely an argument raised by the protester that the award of a contract to Canvas Specialty as the low cost, technically acceptable offeror under request for proposals (RFP) No. N47408-92-R-2018, issued by the Department of the Navy for tension fabric structures, was inconsistent with the terms of the solicitation.

We deny the request for reconsideration.

The RFP, issued on February 13, 1992, contemplated the award of a firm, fixed-price contract for the structures. The agency received five offers in response to the solicitation. Three offerors, including Clamshell and Canvas Specialty, were included in the competitive range. Discussions were held, and best and final offers received and evaluated. Award was made to Canvas Specialty as the offeror submitting the low cost, technically acceptable offer.

Clamshell filed its initial protest with our Office on September 25, 1992, contending that Canvas Specialty did not intend to meet a definitive responsibility criterion set forth in the solicitation. In its comments on the agency

report, submitted on November 25, Clamshell supplemented its protest, arguing for the first time that the award to Canvas Specialty, as the offeror submitting the low cost, technically acceptable offer, was inconsistent with the terms of the solicitation.

We dismissed Clamshell's basic protest because Clamshell's argument concerned an affirmative determination of Canvas Specialty's responsibility not subject to our review. See 4 C.F.R. § 21.3(m)(5) (1993). We dismissed as untimely Clamshell's supplemental argument that the award to Canvas Specialty, as the offeror submitting the low cost, technically acceptable offer, was inconsistent with the terms of the solicitation because this argument was raised more than 10 working days after Clamshell knew, or should have known, of this basis of protest. See 4 C.F.R. § 21.2(a)(2).

In its request for reconsideration, Clamshell does not dispute our dismissal of its argument concerning the agency's affirmative determination of Canvas Specialty's responsibility. Clamshell argues, however, that we erred in dismissing as untimely its supplemental argument that the award to Canvas Specialty, as the offeror submitting the low cost, technically acceptable offer, was inconsistent with the terms of the solicitation. Clamshell essentially contends that our Bid Protest Regulations concerning the timely filing of a protester's comments on the agency report take precedence over our Regulations concerning the timely filing of bid protests for purposes of determining whether a protest issue is timely filed. Compare 4 C.F.R. § 21.3(h) and (j) (comments on the agency report shall be filed with our Office within 10 days after the protester's receipt of the agency report, or within 7 days of the protester's receipt of documents withheld by the agency which our Office subsequently determines should be released) with 4 C.F.R. § 21.2(a)(2) (protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis of protest, whichever is earlier).

Clamshell's argument, that our decision should be reversed because our Bid Protest Regulations concerning the filing of comments on the agency report take precedence over those concerning the timely filing of protests, is predicated on its misunderstanding of our Regulations and thus provides no basis for reconsideration. While it is true that the due date for Clamshell's comments was extended because the firm did not receive a complete copy of the agency report, this did not waive the timeliness requirements for raising

Clamshell's supplemental protest allegation concerning the propriety of the award of a contract to the low cost, technically acceptable offeror, Unitor Ships Serv., Inc., B-245642, Jan. 27, 1992, 92-1 CPD ¶ 110; CH2M Hill S.E., Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413. The timeliness rules for purposes of filing a protest--which are strictly construed--are separate and distinct from the time limits imposed on responding to agency reports--where there is a provision for extending the deadline. There is no applicable exception in our rules pertaining to the timely filing of bid protests that permits their waiver, where, as here, an agency report makes evident a basis for protest, and a protester, who was granted an extension of its comment due date, protests on this basis more than 10 working days later. Id.

The request for reconsideration is denied.



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