



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marathon LeTourneau Sales & Service Company

File: B-254258

Date: August 3, 1993

Lowry C. Wood for the protester.
Catherine M. Evans, Esq., Office of the General Counsel,
General Accounting Office, participated in the preparation
of the decision.

DIGEST

Protest is untimely where not filed within 10 working days
after protester knew of basis for protest; continued pursuit
of matter with agency does not extend time for filing
protest at General Accounting Office.

DECISION

Marathon LeTourneau Sales & Service Company protests the
award of a contract to another offeror under request for
proposals (RFP) No. N62470-91-R-9277, issued by the Depart-
ment of the Navy for remanufacture and modernization of
aircraft crash/salvage cranes. Marathon alleges that the
awardee's proposal did not meet certain requirements of the
RFP.

We dismiss the protest as untimely filed.

In September 1992, the Navy awarded the crane modernization
contract to an offeror other than Marathon. Shortly after
learning of the award, Marathon contacted the awardee as a
prospective subcontractor for the supply of electrical
components. In that process, Marathon learned that the
awardee was planning to rebuild the cranes' electrical
systems instead of replacing the system with new components.
Marathon believed that this was contrary to the RFP require-
ments, and wrote to the contracting officer on January 21,
1993 to request clarification. In the letter, Marathon
stated that:

"The purpose of this letter is to inquire of you
if we are misinformed. If our understanding of
the situation is correct, we wish to file a pro-
test. If our understanding is incorrect and the
components in question are being supplied as new,
we do not wish to create needless problems."

The contracting officer responded to Marathon's inquiry on February 4, confirming that the awardee would be rebuilding the electrical motors and a generator. The contracting officer further stated that she considered the awardee's plan to be consistent with the RFP requirements. On February 11, Marathon again wrote to the contracting officer, essentially disagreeing with her interpretation of the RFP and asserting that a revised solicitation should be issued so that all offerors could compete on an equal basis. Marathon's letter concluded by asking the contracting officer to explain "the proper procedure to follow at this point." The contracting officer answered Marathon's letter on March 4. In her letter, the contracting officer further explained the RFP requirements, and concluded that "a new solicitation is not justified." She also requested that Marathon furnish a list of suppliers of new electrical components. Marathon provided the requested list on March 17; this letter asked the contracting officer again to consider issuing a new solicitation.

On June 7, Marathon filed a protest with the contracting officer, alleging that the agency's acceptance of an offer that did not conform to the RFP requirements placed it and other offerors at a competitive disadvantage. The contracting officer denied the protest on July 13, stating that the protest was not filed in accordance with Federal Acquisition Regulation (FAR) § 33.103(b)(2). This section requires that agency-level protests be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier.

Marathon protested the contracting officer's decision to our Office on July 27. Marathon asserts that its protest was improperly dismissed as untimely because the firm reasonably believed that the contracting officer "still had the matter under consideration." Even if the protest was untimely, Marathon argues, the contracting officer's dismissal decision was unreasonable given her discretion under the FAR to consider untimely protests if good cause is shown. Marathon argues that the opportunity for future cost savings is good cause for considering its protest.

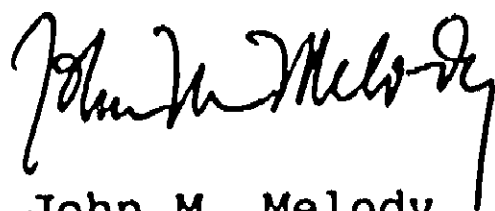
Our Bid Protest Regulations provide (as does the FAR) that protests based on matters other than alleged solicitation improprieties must be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1993). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206. Thus, to be timely under our Regulations, Marathon's agency-level protest would

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have to have been filed within 10 working days after it learned of the basis of its protest. The documents Marathon submitted with its protest show that Marathon knew no later than February 8, the date it received the contracting officer's February 4 letter, that the awardee planned to provide rebuilt electrical components instead of new ones. Thus, Marathon was required to protest the matter by February 23, 10 working days later. The record does not support Marathon's assertion that it "reasonably believed" the contracting officer would revisit her award decision or issue a new solicitation. Each of the contracting officer's letters to Marathon clearly expresses her view that the award conformed to the RFP requirements and that no new solicitation was necessary. Marathon's June 7 protest to our Office therefore is untimely.

We also reject Marathon's assertion that its untimely protest should be considered for good cause; under our Regulations, an untimely protest may be considered for good cause shown. 4 C.F.R. § 21.2(c). We have defined good cause as a compelling reason beyond the protester's control that prevented it from filing a timely protest. Central Texas College, B-245233.5, Feb. 6, 1992, 92-1 CPD ¶ 151. Marathon has not offered any reason--aside from its apparent unfamiliarity with protest procedures, which does not constitute good cause--why it could not have filed its protest in a timely manner. Furthermore, the alleged potential for cost savings does not provide a basis for consideration of an untimely protest. We therefore will not consider Marathon's protest. See Sandia Die & Cartridge, B-244584, Oct. 16, 1991, 91-2 CPD ¶ 338; Manville Bldg. Materials Corp., B-210414, Mar. 15, 1983, 83-1 CPD ¶ 258

The protest is dismissed.



John M. Melody
Assistant General Counsel