



Comptroller General
of the United States

417243

Washington, D.C. 20548

Decision

Matter of: Management Engineering Associates

File: B-253920

Date: September 24, 1993

William S. Ward for the protester.
Octavia Johnson, Esq., Department of Justice, for the agency.
Christine F. Bednarz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the protester allowed at least 4 months to elapse without inquiry as to the status of the procurement, the protester has not met its obligation of diligently pursuing the information on which it bases its protest, which renders the protest untimely under the Bid Protest Regulations.

DECISION

Management Engineering Associates (MEA) protests the rejection of its proposal under request for proposals (RFP) No. 1PI-0015-91, issued by UNICOR, Federal Prison Industries, Inc., Department of Justice, for administration and support services.

We dismiss the protest.

UNICOR issued the RFP on January 28, 1992, and, after receiving initial proposals from the protester and two other offerors, requested best and final offers (BAFO) by October 26. MEA furnished a late BAFO on November 1,¹ after the agency had made award to a higher priced firm on October 28. The agency did not evaluate MEA's BAFO or reconsider the award decision, based upon its application of the late proposal provisions of the Federal Acquisition

¹MEA explained in its cover letter that it did not discover the agency's BAFO request until the BAFO due date because Federal Express deposited the request letter behind the screen of an infrequently used door at the MEA offices.

Regulation (FAR) §§ 15.611, 52.215-10, as incorporated into the RFP.²

MEA did not protest the rejection of its proposal until June 28, 1993, 8 months after the agency awarded the contract. MEA alleges that it could not have protested earlier because it did not learn of the rejection of its proposal until June 21, 1993. The protester denies that it received the notice of award to unsuccessful offerors, which the agency claims to have sent via first class mail to MEA's office on November 3, 1992. MEA also asserts that it placed several phone calls to the agency, commencing on March 3, 1993, in an attempt to determine "what action had transpired" on the procurement, but that the calls went unanswered until June 17.³ While the agency denies any such inquiries about the status of the procurement before June 17, both parties agree that on that date the agency mailed MEA a copy of the November 3 notice of award at the firm's request, which arrived in MEA's office on June 21. According to the protester, this was the first time it realized that award had been made to an offeror at a higher price than its own and that the agency had declined to consider its BAFO under the late proposal rules.

We find that the protest is untimely because the protester did not diligently pursue the information on which it bases its protest. Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.1(a)(2) (1993). It is incumbent upon a protester to diligently pursue the information necessary to establish its basis of protest; a protester may not idly await notification of that information. John W. Gracey, B-232156.2, Jan. 23, 1989, 89-1 CPD ¶ 50.

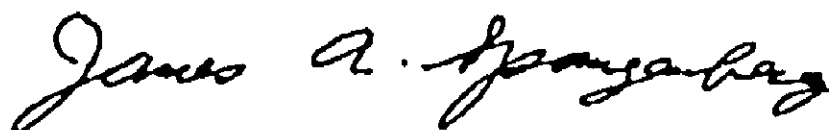
Construing the facts most favorably to the protester, see Greishaber Mfg. Co., Inc., B-222435, Apr. 4, 1986, 86-1 CPD ¶ 330, we will assume that MEA did not receive the November 3 notice to unsuccessful offerors around the time of award and that it first attempted to contact the agency about the status of the procurement on March 3, 1993, not on

²FAR § 52.215-10(c) provides that, "A modification resulting from the Contracting Officer's request for 'best and final' offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation."

³The protester asserts that it called the agency on March 3, March 4, March 9, April 5, May 20, and June 17, 1993, at which point it learned of the award.

June 17, as the agency claims. Even assuming the foregoing, the fact remains that the protester waited at least 4 months after it submitted its BAFO on November 1, 1992, to inquire about the procurement. We note that the protester was prepared for the possibility of an early award in this case, stating in its BAFO that it was "pleased to extend its offer for an additional 30 days to allow evaluation to be concluded," or until December 1; yet, by its story, the protester waited an additional 3 months to place a phone call to the contracting office to ascertain the status of the award. Considering that MEA submitted what it knew to be an untimely BAFO, the protester should not have waited this long to investigate the action taken on its proposal. In our view, a protester who waits 3 or 4 months before investigating the status of a procurement has not satisfied its obligation to diligently pursue the information on which it bases its protest. See Douglas Glass Co., B-237752, Feb. 9, 1990, 90-1 CPD ¶ 175; John W. Gracey, supra, Greishaber Mfg. Co., Inc., supra and S.A.F.E. Export Corp., B-213026, Feb. 10, 1984, 84-1 CPD ¶ 165.

The protest is dismissed.



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