



Comptroller General
of the United States

1242-4

Washington, D.C. 20548

Decision

Matter of: BCM Engineers, Inc.

File: B-256528.2

Date: April 7, 1994

DECISION

BCM Engineers, Inc., protests the rejection of its offer as late under Solicitation No. DACA31-93-R-0059, issued by the Army Corps of Engineers as well as the terms of that solicitation.

We dismiss the protest as untimely.

The solicitation called for offers for technical services to support the Army in maintaining environmental compliance. Proposals were due to be submitted by September 28, 1993. On February 14, the protester found out that the offer that it submitted in response to the solicitation had not been considered because it was rejected as late. By letter dated February 14 to the agency, BCM asserted that it could prove that its proposal was timely submitted and requested an investigation and resolution of this problem. By letter dated March 7, the agency declined to consider BCM's proposal. This position was apparently reiterated in a meeting between the agency and protester on March 8. By letter dated March 11 to the agency, BCM restated its position, responded to the agency letter and made its "third informal request" that the agency consider its proposal. A meeting between Corps and BCM personnel followed on March 17, wherein the Corps again advised BCM that its proposal would not be considered. BCM's protest of the rejection of its proposal and the alleged defective solicitation was then filed at our Office on March 29.

We dismiss the protest as untimely because it was filed more than 10 days after the protester knew, or should have known, of the basis for its protest.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, 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 for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). In this regard, a protester's receipt of oral information forming

the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268.

Here, BCM was apprised of the rejection of its proposal on February 14 and was required to protest this rejection within 10 working days thereafter. While BCM now asserts that its February 14 letter to the agency constituted an agency-level protest, our review of that letter does not indicate that it could be considered a protest; nor did the agency consider it to be a protest; nor does any subsequent BCM correspondence, before the protest to our Office, suggest that the February 14 letter constituted a protest-- to the contrary, BCM referenced its earlier inquiries to the Corps as "informal requests." Therefore, BCM's protest of the rejection of its proposal was untimely since it was first filed on March 29, more than 10 days after February 14.

In any case, even assuming the February 14 letter did constitute an agency-level protest, the Corps' March 7 response was clearly the initial adverse action on that protest. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f). Therefore, BCM's protest of the rejection of its proposal as late is untimely.

BCM also protests that the solicitation was defective because it was for architect engineer services and should have been procured on that basis. This protest basis is also untimely as it concerns an apparent solicitation impropriety. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, the protested solicitation terms were clear on their face and the protest is therefore untimely.

The protest is dismissed.



James Spangenberg
Assistant General Counsel