



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Agave Data Systems, Inc
File: B-257073
Date: May 19, 1994

DECISION

Agave Data Systems, Inc. protests the modification made and orders placed under contracts awarded by Federal Emergency Management Agency (FEMA) for automated construction estimates (ACE).

We dismiss the protest.

Five firms, including Agave, were awarded contracts for manually processed inspections. In July of 1993, FEMA, after conducting a competition among the five firms, modified two of the five contracts to include the ACE requirements and subsequently placed orders under the modifications.

Agave protests that the contract modifications exceed the scope of the contract. Even assuming that this is an issue Agave, as an incumbent contractor, properly may protest, this aspect of the protest is untimely. 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). As stated above, FEMA initiated the modifications in July of 1993. Since Agave did not protest until April 14, 1994, this aspect of its protest is untimely.

Agave also contends that the agency improperly has continued to place non-ACE orders under other firms' contracts even though the agency allegedly declined to renew Agave's contract (by exercising an option) on the basis that no more non-ACE orders were anticipated. This is essentially a challenge to the agency's decision not to exercise Agave's option, and its decision instead to continue placing orders under the other firms' contracts. There is no basis for such a challenge--contract options are exercised solely at the discretion of the government. California Shorthand Reporting, B-236680, Dec. 22, 1989, 89-2 CPD ¶ 584. Further, the manner in which an agency places orders under

existing contracts is a matter of contract administration. We do not exercise jurisdiction over matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. See 4 C.F.R. § 21.3(m)(1); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228.

The protest is dismissed.



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