



Comptroller General
of the United States

1013209

Washington, D.C. 20548

Decision

Matter of: Dee-Lite Catering
File: B-256560.2
Date: September 20, 1994

DECISION

Dee-Lite Catering protests the award of a contract to R & M Vending for vending machine services at the Boron Federal Prison Camp by the Department of Justice, Bureau of Prisons (BOP), under solicitation No. 150-0076.¹

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) (1994). 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

¹As the protester notes in its protest, the procurement at issue here was the subject of a prior protest by another firm, Premiere Vending. As explained in our decision on Premier Vending's protest, there initially were two procurements at issue--one conducted by the BOP for six vending machines in the inmate area of the Boron facility and one conducted by the Boron Employees Club for vending services in the employee and visitor lounge areas. It is unclear from Dee-Lite's submission which of these procurements it is challenging. To the extent that it is challenging award under the procurement conducted by the Boron Employees Club, that award is not for review by our Office since the Club is a nonappropriated fund instrumentality and our jurisdiction to review bid protests is limited to procurements conducted by federal agencies. See Premiere Vending, B-256560, July 5, 1994, 94-2 CPD ¶ 8.

required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268.

Here, the protester asserts that the agency improperly allowed the awardee to change its proposed price² without giving the protester a similar opportunity. The protester states that it was notified on August 25, 1994, that award had been made to R & M Vending at a rebate amount of 23.5 percent. The protester also states that it had been told in February that R & M originally had proposed a rebate of 16.5 percent. Thus, as of August 25, the protester was or should have been aware of its basis for protest, i.e., that R & M was allowed to change its offered rebate. Accordingly, any protest on this ground had to have been filed within 10 days after August 25, or by September 9. The protest was not received in our Office until September 13. Accordingly, it is untimely and will not be considered.

The protester also argues that the awardee is providing used rather than new machines as required by the RFP. This is a matter of contract administration which is not for resolution under our bid protest function. See 4 C.F.R. § 21.3(m) (1).

The protest is dismissed.

Christine S. Melody
Christine S. Melody
Assistant General Counsel

²Apparently the solicitation called for offerors to propose percentage rebates to the agency.