



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Skyline Industries, Inc.

File: B-258626

Date: November 21, 1994

DECISION

Skyline Industries, Inc. protests the proposed award of a contract to Wesco Industries, Inc. under request for proposals (RFP) No. SPO461-94-R-0095-0008, issued by the Defense General Supply Center (DGSC) for helicopter seat bottom covers. Skyline alleges that Wesco was improperly qualified as an approved source for the items being procured.

We dismiss the protest as untimely.

The RFP was issued as a small business set-aside on November 16, 1993, and was originally scheduled to close on December 13. It was amended on eight separate occasions with each amendment establishing a new closing date and time; the closing date for amendment No. 0008 was August 30, 1994.

The item description contained in the RFP provided that all products must meet the requirements set forth in the Department of the Army's AVSCOM Spares Technical Data Package (STDP) AV1040-11-00, Revision "B"; it further listed three previously approved sources--Skyline, Wesco and The Conrad Company.

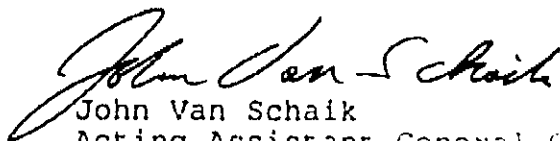
Four initial offers were received. Following best and final offers (BAFO), three offers remained for consideration. Wesco submitted the lowest priced BAFO. On September 21, DGSC notified Skyline that Wesco was the apparent successful offeror and that unsuccessful offerors had until September 27 to file challenges to Wesco's small business size status.

Skyline filed an agency level protest on September 21 challenging Wesco's source approval status, alleging that the firm had not complied with the technical data package requirements of the STDP. That protest was denied on September 26 and Skyline filed a protest with this Office the next day reiterating its challenges to Wesco's source approval status.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior the time set for receipt of initial proposals. 4 C.F.R. § 21.2 (a) (1) (1994). If a protest has been filed with the contracting agency, we will consider a later protest filed with our Office if it is filed within 10 working days of actual or constructive knowledge of initial adverse agency action; however, this latter rule does not apply to situations where the agency level protest was untimely filed in the first place. See 4 C.F.R. § 21.2(a) (3).

Here, the essence of Skyline's complaint is that Wesco should never have been qualified as an approved source because the firm allegedly never complied with the STDP requirements; however, in our view, Wesco's status as an approved source was apparent to Wesco when the RFP was issued in November of 1993 because the firm is clearly listed as approved in the solicitation's item description. Since Skyline did not file either its agency level protest or its protest with this Office prior to the time set for receipt of initial offers, we will not consider the matter further. 4 C.F.R. § 21.2(a) (1) and (3).

The protest is dismissed.



John Van Schaik
Acting Assistant General Counsel

¹Skyline urges that we consider its protest under the exceptions to our timeliness rules which provide that we may consider an untimely protest for good cause shown, or where we determine that a protest raises issues that are significant to the procurement system. 4 C.F.R. § 21.2(c). These exceptions are strictly construed and rarely used; in order to invoke them, the record must show that some compelling reason beyond the protester's control prevented timely filing or that the issues raised are of widespread interest to the procurement community. American Material Handling, Inc.--Recon., B-255467.2, Feb. 25, 1994, 94-1 CPD ¶ 158. Skyline provides no explanation as to why its protest was filed late and, although we recognize that the issues raised are important to the protester, we do not find that they are of widespread interest to the procurement community. Id.