



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tucson Mobilephone, Inc.--Reconsideration

File: B-259776.2

Date: March 6, 1995

Theodore M. Bailey, Esq., Bailey, Shaw & Deadman, for the protester.

DIGEST

A request for an extension of bid opening or date set for receipt of proposals alone does not represent a protest where the nature of the request does not imply a violation of law or regulation.

DECISION

Tucson Mobilephone, Inc. request reconsideration of our December 28, 1994, dismissal of its protest of the Department of the Navy's refusal to extend the due date for receipt of proposals under request for proposals (RFP) No. N00164-95-R-0013. We dismissed the protest as untimely because it was not filed prior to the closing time as required by our Bid Protest Regulations, 4 C.F.R. § 21.12 (b) (1994).

On reconsideration, Tucson alleges that we erred in concluding that it had not timely protested. It states that in its protest to us it indicated that it had twice requested the Navy to extend the due date, and that these requests constituted a timely agency-level protest. In support of this position, it refers to our cases holding that a submission to an agency need not include that word "protest" to be a protest, but need only be an "expression of dissatisfaction and a request for corrective action." Tucson asserts that its communications here with the Navy satisfy that standard.

It is true that an actual or prospective offeror may effectively file a bid protest without using the term "protest"; all that is required is a manifestation of an intent to protest, typically, as Tucson states, through an expression of dissatisfaction and a request for corrective action. See, e.g., Chesapeake & Potomac Tel. Co., B-224228; B-224228.2, Feb. 5, 1987, 87-1 CPD ¶ 120. As the cases cited by Tucson indicate, we have recognized such an intention to protest in connection with both

solicitation defects, Reeves Bros. Inc.; H. Landau & Co., B-212215.2; B-212215.3, May 2, 1984, 84-1 CPD ¶ 491; Chesapeake & Potomac Tel. Co., *supra*, and various agency procurement-related actions. See Mackay Comms.-Recon., B-238926.2, Apr. 25, 1990, 90-1 CPD ¶ 426 (involving a solicitation cancellation); Mammoth Firewood Co., B-223706, Sept. 4, 1986, 86-2 CPD ¶ 261 (involving the conduct of a timber sale).

However, we do not view all requests for an extension of bid opening or the closing date for receipt of proposals as manifesting an intent to protest. Unlike an expression of dissatisfaction with allegedly defective specifications or with some alleged impropriety in the conduct of a procurement or sale, which, if the allegations are true, normally warrants some corrective action since the contracting officer is expected to conduct a procurement that is free from material defects, a request for a bid opening/closing date extension often reflects a need or desire of the requestor rather than a solicitation defect. Accordingly, while we have on occasion assumed, for purposes of argument, that an extension request to the agency was an agency-level protest, see, e.g., Jarrett S. Blankenship Co., B-213270, Oct. 25, 1983, 83-2 CPD ¶ 504, there are many cases in which such a request was not treated as a protest. See, e.g., General Elec. Co.-Recon., B-237733.2, Jan. 30, 1990, 90-1 CPD ¶ 142; Zapata Gulf Marine Corp., B-235249, July 27, 1989, 89-2 CPD ¶ 85; Jets Servs., Inc., B-207205, Dec. 6, 1982, 82-2 CPD ¶ 504; Decision Planning Corp., B-202536, July 8, 1981, 81-2 CPD ¶ 20; Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD ¶ 75. Indeed, we have often discussed extension requests and protests as mutually exclusive. See, e.g., McLemore Pump, Inc., B-230031, Jan. 27, 1988, 88-1 CPD ¶ 83. Thus, while a request for a bid opening/closing date extension may typically express dissatisfaction (with the scheduled date) and request corrective action (extension of the date), that alone will not automatically result in our viewing the request as a protest. Rather, the general rule is that a request for an extension of bid opening may or may not constitute a protest, depending upon the "nature" of the request. See Don Strickland's Consultant and Advisory Serv., B-214733, Apr. 11, 1984, 84-1 CPD ¶ 412.

Here, we are not inclined to view Tucson's correspondence with the Navy as a protest. Its first letter "respectfully request[ed] an extension. . . ." Its second letter stated that:

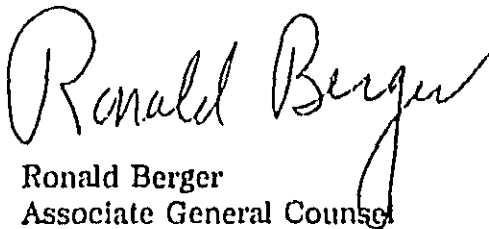
" . . . due to the late arrival of said amendments, we request an extension of proposals closing to enable and ensure that my proposal will be received in a timely manner.

"The receipt of the last amendment after review and processing did not allow for at least [5] mailing days to comply with [Federal Acquisition Regulation (FAR)] postmark requirements."

Tucson concluded with a request that the scheduled closing date be extended from December 21 to December 27 "or later."

We do not see these letters as expressing dissatisfaction with an aspect of the procurement that allegedly was contrary to law or regulation. Rather, these letters suggest that Tucson wanted more time to review the solicitation amendments and to be able to transmit its proposal by mail. However, there is no regulatory requirement that offers be sent by mail; moreover, Tucson, if it preferred to use the mail, could have used Express Mail service and met the "FAR postmark requirements" (which, we assume, refers to the use of postmarks to determine whether a late proposal may be considered, see FAR § 52.215-10), since it had received the amendments in question on December 16, 5 calendar days and 3 business days prior to the closing date. Accordingly, we remain of the view that Tucson did not lodge a protest with the contracting agency prior to the time for closing and that the protest filed with us was untimely.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel