



Decision

Matter of: Castle Abatement Corporation
File: B-262142
Date: August 28, 1995

DECISION

Castle Abatement Corporation (CAC) protests the rejection of its bid as nonresponsive by the Army Corps of Engineers under invitation for bids No. DACA51-95-B-0055.

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.

On June 30, 1995, the protester received by telefacsimile (fax) a letter from the contracting officer informing CAC that its bid bond exceeded the underwriting limitation of its surety and that, since no proof of reinsurance was submitted with its bid (as required by Federal Acquisition Regulation (FAR) § 28.202(a)(3)), its bid was being rejected as nonresponsive for failure to submit good and sufficient surety. CAC maintains that rejection of its bid was improper because it reads FAR § 28.202(a)(4) as allowing it to reinsure its bid within 45 days after execution of the bond, which CAC claims to have done.

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) (1995). Since CAC was put on notice of the basis for its protest by the June 30 fax, any protest of the matter had to be filed with our Office no later than July 17. Since CAC did not file its protest until July 25, it is untimely and will not be considered. CAC argues that its protest should be considered timely because it did not become aware of FAR § 28.202(a)(4), the provision which supports its protest, until July 17. This argument is without merit. CAC and other bidders are on constructive notice of the FAR since it

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is published in the Federal Register and The Code of Federal Regulations. See Environmental Technology Assessment Compliance Serv., B-258093, Dec. 13, 1994, 94-2 CPD ¶ 239.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The protest is dismissed.



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