



Decision

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Matter of: Frontier Technologies

File: B-420878

Date: August 9, 2022

Matthew D. Fischer, Esq., Fischer Law Office, for the protester.
Debra J. Talley, Esq., Department of the Army, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging rejection of proposal is dismissed as untimely because it was filed with our Office more than 10 days after the protester's agency-level protest was denied.

DECISION

Frontier Technologies, a small business of Long Beach, California, protests the rejection of its proposal under request for proposals (RFP) No. W15QKN-21-R-0106, issued by the Department of the Army, Army Materiel Command for production of M88 practice mine canisters. The protester argues that the agency unreasonably rejected the firm's proposal as having been submitted not in accordance with the solicitation's instructions. The protester submitted its protest to our Office after having first filed an agency-level protest with the Army Materiel Command.

We dismiss the protest as untimely because it was filed more than 10 calendar days after the protester had actual or constructive knowledge of adverse agency action on its agency-level protest.

BACKGROUND

On January 26, 2022, utilizing the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the solicitation seeking proposals for the production, testing, packaging, and delivery of M88 practice mine canisters. Protest exh. 2, Protester Proposal with RFP at 8-9.¹

¹ The protester submitted its protest and protest exhibits as a single Adobe PDF document with continuous pagination; our citations to the protest exhibits use the PDF pagination.

As relevant here, the solicitation set forth that “[p]roposals shall be submitted in electronic copies via the DOD SAFE website for secure file drop off.”² Protest exh. 2, Protester Proposal with RFP at 90. The solicitation further cautioned offerors to “[p]lease note that electronic e-mail proposal submissions will not be accepted.” *Id.* at 91. The solicitation established March 29, 2022, as the due date for receipt of proposals. Protest at 3; Protest exh. 6, Denial of Agency-Level Protest at 164.

In preparing its proposal, Frontier encountered an instruction on the DOD SAFE website that provided: “DOD SAFE is NOT to be used for contract solicitation or proposal submission.” Protest at 2; exh. 1, DOD SAFE Website Instructions at 6. Based on this instruction, Frontier did not submit its proposal via the DOD SAFE website, and instead submitted its proposal via email to the agency on March 29, 2022. Protest at 2; exh. 2, Protester Proposal with RFP at 7. On March 30, the agency notified Frontier that the firm’s proposal “was not submitted appropriately, and did not follow the explicit instructions in the Solicitation,” and that the agency would not evaluate Frontier’s proposal. Protest exh. 4, Letter from Contracting Officer to Protester at 159.

On April 6, Frontier, through its counsel, submitted an agency-level protest to the Army, challenging the rejection of the firm’s proposal. Protest exh. 5, Agency-Level Protest at 160. On June 21, the agency emailed its decision denying the agency-level protest to counsel for Frontier. Protest exh. 6, Denial of Agency-Level Protest at 163. At 7:44 p.m. Eastern Time on Friday July 8, Frontier filed this protest in our Electronic Protest Docketing System (EPDS). Docket No. 1.

DISCUSSION

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Where a protest first has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 calendar days of “actual or constructive knowledge of initial adverse agency action.” 4 C.F.R. § 21.2(a)(3). In this respect, 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. *Dominion Aviation, Inc.--Recon.*, B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

The term “adverse agency action” means any action or inaction on the part of a contracting agency that is prejudicial to the position taken in a protest filed there. 4 C.F.R. § 21.0(e). Here, the agency’s June 21 decision denying Frontier’s agency-level protest constitutes “adverse agency action.” *American Medequip--Recon.*,

² The Department of Defense Secure Access File Exchange (DOD SAFE) is a web-based tool that provides users with authenticated DOD common access cards, and guests (unauthenticated users), the ability to securely send and receive large files, including files that are too large to be transmitted via email. *InterImage, Inc.*, B-418733, B-418733.2, Aug. 10, 2020, 2020 CPD ¶ 269 at 3 n.6.

B-259474.3, Feb. 2, 1995, 96-1 CPD ¶ 173 at 2 (affirming dismissal of a protest that was filed more than 10 days after the denial of its agency-level protest).

According to the protester, counsel for Frontier “was on vacation” when the June 21 agency-level protest decision was delivered “and did not return to the office until June 27.” Protest at 3. Thus, the protester maintains that it did not have knowledge of the denial of its agency-level protest until June 27. Protest at 3. For its part, the agency represents that “[t]here is no reason to believe that Protester did not receive the Decision on June 21 as [protester’s counsel] had received other emails from [the agency] without any difficulty on the date on which they were sent.” Agency Req. to Submit Documents at 1.

Here, we need not resolve the factual dispute between the parties regarding the date on which Frontier had actual or constructive knowledge of the denial of its agency-level protest. Even if, for the sake of argument, we assume the facts most favorable to the protester--*i.e.*, that the protester did not have knowledge of the denial of its agency-level protest until June 27--Frontier’s submission of its protest to our Office on July 8 would still be untimely.

Our regulations specify that “[a] document is filed on a particular day when it is received in EPDS by 5:30 p.m., Eastern Time.” 4 C.F.R. § 21.0(g). When a filing is submitted in EPDS after 5:30 p.m., we consider it to be filed on our Office’s next business day. See *CWIS, LLC*, B-416544, July 12, 2018, 2018 CPD ¶ 236 at 3; *FitNet Purchasing Alliance*, B-400553, Sept. 24, 2008, 2008 CPD ¶ 177 at 2. Thus, Frontier’s protest is considered to have been filed on Monday July 11. Because this date is more than 10 days after June 27, Frontier’s protest to our Office is untimely.³

Counsel for Frontier represents that he had not previously filed a protest with our forum; that he miscalculated the 10-day filing period due to the Independence Day holiday; and that he also “misunderstood the 5:30 p.m. Eastern Time filing deadline as being 5:30 p.m. local time,” which is Pacific Time for protester’s counsel. Resp. to Req. for Additional Briefing at 1. Thus, when filing prior to 5:30 p.m. Pacific Time on July 8, counsel for Frontier thought he “had complied with the filing deadline.” *Id.* Counsel further represents he makes “no excuses for the miscalculation of the date and time of filing,” and asks that our Office not “punish Frontier for his misunderstanding of the filing deadlines.” *Id.*

³ For that matter, we note that Frontier’s protest would have been untimely even had Frontier filed its protest prior to 5:30 p.m. Eastern Time on July 8. Our regulations define the term “days” as “calendar days,” and provide that in computing filing timelines “the day from which the period begins to run is not counted.” 4 C.F.R. § 21.0(d). Accordingly, assuming June 27 as the date on which Frontier’s 10-day filing period began to run, the first day counted in computing Frontier’s filing deadline would have been June 28 and the tenth, and last day, of Frontier’s filing period would have been July 7, not July 8.

Thus, the facts presented here--as well as counsel's own admission--clearly demonstrate that the protest submitted by Frontier on July 8, is untimely. 4 C.F.R. § 21.2(a)(3); see *American Medequip--Recon*, *supra*.

The protester, however, requests that our Office consider Frontier's untimely protest under the significant issues exceptions to our timeliness rules. Resp. to Req. for Additional Briefing at 1. Frontier contends that its protest raises two issues significant to the procurement system. First, the protester argues that the solicitation "included requirements that on their face violate US Army Contracting Command and Department of Defense system requirements and restrictions." *Id.* at 2. Specifically, the protester contends that the solicitation's instructions for offerors to submit proposals via the DOD SAFE website "directly violates the DOD SAFE system's own protocols." *Id.* Second, the protester maintains that it "is informed and believes" that the agency actually has received and reviewed Frontier's proposal, in violation of various "relevant bid procurement and consideration regulations." *Id.* The protester, however, fails to specify, or in any way identify, what these referenced procurement regulations or "considerations" may be.

We find no merit in Frontier's assertion that our Office should review this protest under the significant issue exception to our timeliness rules. Pursuant to our regulations, our Office may consider the merits of an untimely protest when good cause is shown or when the protest raises issues significant to the procurement system. 4 C.F.R. § 21.2(c). In order to prevent our timeliness rules from becoming meaningless, exceptions are strictly construed and rarely used. *Vetterra, LLC*, B-417991 *et al.*, Dec. 29, 2019, 2020 CPD ¶ 15 at 3. What constitutes a significant issue is decided on a case-by-case basis. *Cyberdata Techs., Inc.*, B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 3. Generally, however, we regard a significant issue as one of widespread interest to the procurement community that has not been considered on the merits in a prior decision. *Vetterra, LLC*, *supra*. Moreover, invoking the significant issue exception is a matter entirely within our Office's discretion. *Capital Brand Group, LLC--Recon.*, B-418656.2, July 9, 2020, 2020 CPD ¶ 231 at 4. Here, Frontier has failed to articulate, let alone demonstrate, how either of those two claims is an issue of widespread interest to the procurement community that would warrant their resolution in the context of an otherwise untimely protest. See *Baldt Inc.*, B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2-3.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel