

Decision

Matter of: US21, Inc.

File: B-419747

Date: April 27, 2021

Christopher R. Shiple, Esq., Randolph Law, PLLC, for the protester.
Matthew Vasquez, Esq., Defense Logistics Agency, for the agency.
Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to properly publicize solicitation, and thereby unreasonably limited competition, is dismissed as untimely because the protester knew the basis of its protest more than 10 days prior to filing with our Office.

DECISION

US21, Inc., a small business of Fairfax, Virginia, protests the decision of the Defense Logistics Agency (DLA) to award multiple contracts under request for proposals (RFP) No. SPE60520R0242, for the supply of fuel products for the U.S. Navy at multiple military installations in the Caribbean. The protester contends that DLA improperly limited competition by failing to properly publicize the solicitation.

We dismiss the protest as untimely.

On September 10, 2020, DLA issued a request for information (RFI) on beta.sam.gov, the single, government-wide point of entry (GPE), seeking potential sources of supply for its fuel requirements for DLA customers in the Caribbean; responses were due by September 21. Protest, exh. 1 at 2. On December 8, the agency issued the solicitation for its fuel requirements on beta.sam.gov, seeking the submission of proposals by January 25, 2021. *Id.*, exh. 2 at 1. On March 5, the protester spoke with DLA's contract specialist for this procurement, via telephone, who advised the protester that the solicitation requirement was closed. *Id.*, exh. 3 at 2. DLA further informed the protester that the agency had mistakenly listed the solicitation as a "sources sought" notice rather than as a "solicitation" on beta.sam.gov. *Id.* The protester requested that DLA reopen the competition due to the posting error, but the agency declined. *Id.* at 2. The protester made the same request, several weeks later, on March 25 and April 1. *Id.*

The agency notified US21, on April 1, that award had been made. *Id.* US21 submitted this protest on April 12.

The protester argues that the agency's mischaracterization of the solicitation as a sources sought notice on the GPE unreasonably limited competition and prevented US21 from submitting a response. Protest at 3. The agency, however, seeks dismissal of US21's protest as untimely filed. Req. for Dismissal at 1. In support of its position, the agency highlights the protester's acknowledgment that "it first learned that the solicitation had been issued and the period to submit offers had already closed during a call with DLA Energy on March 5, 2021[.]" and that its request to have the competition reopened was denied. *Id.* Because US21 first learned of its basis of protest on March 5, the agency argues the protester should have filed its protest with our Office no later than 10 days following that date. 4 C.F.R. § 21.2(a)(2). Having instead waited 38 days to file its protest, the agency argues US21's allegations are untimely. Req. for Dismissal at 1.

In response, the protester argues that because it is not challenging the terms of DLA's solicitation (but rather, the manner in which it was publicized), its protest is a challenge to the award of a contract, and was thus timely filed 10 days following the notification of award. Resp. to Req. for Dismissal at 1-2. The protester, an incumbent contractor, further argues that because of the COVID-19 pandemic, "many contracts that would normally be competed have been extended" without an official award notification. *Id.*, exh. 1 at 1.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These 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. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar 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).

Here, we agree with the agency that the protest is untimely. US21 received actual notice of its alleged grounds of protest--namely, that the agency failed to properly publicize its requirement on the GPE, impermissibly limiting competition and preventing US21 from submitting a proposal--during its March 5 phone call with the DLA contract specialist. Protest at 3. On that date, US21 learned that (1) DLA had mistakenly published the solicitation as a sources sought notice, (2) the period for the submission of proposals had closed, and (3) that the agency would not reopen the competition to allow US21 to submit a proposal. This information forms the complete basis of US21's protest, which solely concerns the manner of solicitation, not the purported award, as

the protester suggests.¹ *Id.* Accordingly, US21 was required to file a protest with our Office no later than 10 days from March 5. See 4 C.F.R. §21.2(a)(2)). Because US21 did not file the protest with our Office until April 12, its protest is untimely and is therefore dismissed. *Viatek, Inc.*, B-218063, April 5, 1985, 85-1 CPD ¶ 397 at 3; *AeroSage, LLC; SageCare, Inc.*, B-415607, *et al.*, Jan. 3 2018, 2018 CPD ¶ 11 at 4.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

¹ The protester also argues that because some of its contracts have been extended without a notification of award, and because the firm only learned that its incumbent contract would not be extended when the agency notified US21 of the award decision on April 1, this protest is timely filed. Resp. to Req. for Dismissal, exh. 1 at 1. We disagree. The extension of US21's prior contract is not relevant to the resolution of the agency's request for dismissal or the protest. Any potential extension of US21's contract does not bear on the agency's failure to properly publicize the requirement, which prevented the protester from submitting a proposal for the follow-on contract. Accordingly, any possibility for a potential extension of the protester's incumbent contract did not toll the time for US21 to challenge the agency's action.