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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200064 DATE: October 29, 1980

MATTER OF: Instrument Control Service DLG01467

DIGEST:

1. Protest alleging that original solicitation was improperly canceled since resolicitation contains substantially same requirements is untimely since it was filed more than 10 working days after receipt of resolicitation by protester.
2. Protest alleging that prime contractor acting for Department of Energy improperly requested best and final offers on more than one occasion is untimely since it was filed more than 10 working days after basis for protest was known.
3. Exceptions to timeliness requirements are not applicable where protester has not demonstrated good cause for untimely filing and protest does not raise issues of widespread and significant interest to procurement community.
4. Where merits of protest are not for consideration because protest was untimely filed, no useful purpose would be served by holding bid protest conference.

Instrument Control Service (ICS) protests against award of any contract under request for proposals (RFP) No. 295-P-0049 issued by Parsons-Gilbane, a prime contractor acting for the Department of Energy. ICS protests on the basis that the requirement in RFP No. 295-P-0049 is the same requirement for which proposals were solicited under RFP No. 295-P-1025 which was canceled by Parsons-Gilbane on February 15, 1980. ICS requests that RFP No. 295-P-1025 be reinstated and that award be made under it.

[Protest Alleging Improper Cancellation of Solicitation] ~~012612~~ 113645
DLG05413
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The protest is dismissed because it was not filed in our Office in a timely manner.

The original solicitation (RFP No. 295-P-1025) was issued by Parsons-Gilbane on July 28, 1979, for design, fabrication, and installation of additional field instrumentation at the Department of Energy's West Hackberry, Louisiana, site. ICS submitted a proposal to Parsons-Gilbane on October 15, 1979. After a number of amendments were issued changing the specifications and substantially delaying the closing date, ICS filed a protest with Parsons-Gilbane against award to any other offeror by letter dated January 17, 1980. ICS alleged, among other things, that there was "an apparent leak of confidential procurement information occurring during the evaluation period" and that there was "a strong possibility of auction techniques" being utilized by Parsons-Gilbane in this procurement. Parsons-Gilbane denied this protest by letter of January 24, 1980. However, by letter dated February 15, 1980, Parsons-Gilbane notified all offerors that RFP No. 295-P-1025 was canceled and that a new RFP would be issued "in the near future, incorporating design changes to the instrumentation package."

The resolicitation (RFP No. 295-P-0049) was issued by Parsons-Gilbane on June 16, 1980, and a copy was sent to ICS on that date. The closing date for receipt of initial proposals was set for August 18, 1980. By letter of August 14, 1980, ICS informed Parsons-Gilbane that it would not submit a proposal because "our heavy workload currently within our own organization simply will not permit us to expend the effort required to prepare the proposal." By letter of August 15, 1980 (filed in our Office on August 21, 1980), ICS protested any award to be made under the resolicitation.

The Department of Energy argues that, since ICS did not submit a proposal under the resolicitation, ICS should not be considered an "interested party" eligible to file a protest under section 20.1(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980). We are not persuaded that ICS does not have the

requisite interest since ICS requests we recommend that award be made under the original solicitation under which ICS did submit a proposal. However, in view of the fact that we believe this protest to be untimely, we will not address this issue further.

Essentially, ICS is protesting the cancellation of the original solicitation because the resolicitation as issued contains the same basic requirements as the original solicitation. Thus, ICS contends that the need as defined in the original RFP still exists, that the original RFP should not have been canceled, and that award therefore should be made under the original RFP. This basis of protest should have been known to ICS upon receipt of the resolicitation which was mailed to ICS on June 16. Under section 20.2(b)(2) of our Bid Protest Procedures, ICS was required to file this protest issue within 10 working days of its receipt of the resolicitation. Consolidated Photocopy Company, Inc., B-196136, January 29, 1980, 80-1 CPD 80. Allowing a reasonable time for ICS to have received the June 16 mailing, it is apparent that this protest (filed on August 21) is untimely. Therefore, we will not consider this issue on its merits.

A second issue raised by ICS concerns the fact that Parsons-Gilbane requested best and final offers on more than one occasion under the original solicitation. This basis of protest concerns allegedly improper actions taken by Parsons-Gilbane prior to February 15, 1980 (the date the original solicitation was amended). ICS had to file this protest issue within 10 days after it knew this basis of protest. Again, this issue was not filed in our Office until August 21, 1980, and it is, therefore, untimely under section 20.2(b)(2) of our Procedures.

ICS requests that if we find its protest untimely, we consider the merits of the protest under section 20.2(c) of our Bid Protest Procedures. This section permits consideration of untimely protests where either good cause is shown or where issues of significant interest are raised. Good cause generally refers to some compelling reason beyond the protester's control

which prevented it from filing a timely protest; the significant issue exception requires the raising of questions of widespread interest to the procurement community. See Eglen Hovercraft, Incorporated, B-193050, January 22, 1979, 79-1 CPD 39, aff'd, March 14, 1979, 79-1 CPD 179. [ICS has neither demonstrated good cause nor raised issues of such widespread and significant interest as to warrant application of these exceptions.]

Lastly, ICS has requested a conference on the protest as provided for in section 20.7 of our Bid Protest Procedures. However, where, as here, the merits of a protest are not for consideration, we believe that no useful purpose would be served by holding a conference. Neal R. Gross and Company, Inc., B-194408, August 14, 1979, 79-2 CPD 121.

Milton J. Socolar

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