Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fumigadora Popular, S.A.

File: B-276676

Date: April 21, 1997

Jed L. Babbin, Esq., Tighe, Patton, Tabackman & Babbin, L.L.C., for the protester.
Diane D. Hayden, Esq., Department of the Navy, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Post-debriefing protest of rejection of bid as unreasonably low is untimely under the Bid Protest Regulations where it was filed more than 10 days after the protester received written notice from the agency of the basis for rejection of its bid; since the procurement was not conducted on the basis of competitive proposals, the timeliness rules based on requested and required debriefings are not applicable.

DECISION

Fumigadora Popular, S.A., protests the rejection of its bid as unreasonably low by the Department of the Navy, Naval Facilities Engineering Command, Resident Officer in Charge of Construction, Panama Canal Area, under invitation for bids (IFB) No. N62470-96-B-4189, for pest control services.

We dismiss the protest.

At the November 20, 1996, bid opening, the bids ranged in price from Fumigadora's low bid of $70,782 to a high bid of $950,000. The Navy's estimate was $230,000. Shortly after bid opening, the Navy asked Fumigadora to confirm its bid price, which it did on December 16. In follow-up letters to the Navy dated December 17 and December 26, Fumigadora explained that it was able to provide the services for the low price because it was attempting to expand its business and its overhead costs were already absorbed by its subcontracts with an Army contractor.

On March 13, 1997, the protester inquired of the Navy as to the status of contract award. The following day, March 14, the protester received by facsimile transmission a copy of a letter addressed to Fumigadora from the contracting officer, which was dated February 13, stating that:

> "[a]lthough your firm was considered to have the expertise necessary to perform the work outlined in the specification, your bid has been

> rejected because your extremely low bid amount is not a fair and reasonable price as it is evident that the costs to perform the work required by the contract exceed your bid price. You have indicated in correspondence that many of your overhead costs, including labor salaries are being covered by other contracts."

The letter also stated that the contract had been awarded to TNT Control de Plagas. Fumigadora had not received the letter earlier because the letter had apparently been mailed to the wrong address.

Following its March 14 receipt of the contracting officer's letter, Fumigadora requested a debriefing, which the Navy provided on March 31. According to Fumigadora, Navy officials stated at the debriefing that they had rejected the bid because they were "uncertain that the company could perform at its low price if it should lose the jobs that it is performing on subcontracts for an Army contractor that entail the same kind of work as that covered by the Navy contract in question." Fumigadora filed its protest with our Office on April 4, contending that none of the criteria of Federal Acquisition Regulation § 14.404-2 pertaining to the rejection of individual bids were applicable here or cited by the Navy as a reason for rejecting Fumigadora's bid.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest such as Fumigadora's, based on other than alleged improprieties in a solicitation, must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier; in the case of a protest challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required, a protest filed not later than 10 days after the date on which the debriefing is held will be timely. 4 C.F.R. § 21.2(a)(2) (1997). These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. Professional Rehabilitation Consultants, Inc., B-275871, Feb. 28, 1997, 97-1 CPD ¶ 94.

Fumigadora contends that it did not learn of the basis for its protest until the March 31 debriefing, and since it filed its protest on April 4, its protest was timely filed within 10 calendar days of when it knew the basis of its protest, as required. In this regard, Fumigadora maintains that neither the contracting officer's letter received on March 14, nor any events prior to the March 31 debriefing, gave Fumigadora any actual or constructive notice of the grounds of this protest. Specifically, Fumigadora asserts that the contracting officer's letter failed to adequately explain, or give plausible reasons for, the rejection of the bid, and that the "real reason" for the rejection of Fumigadora's bid was only revealed during the March 31 debriefing.

While Fumigadora may have questioned the adequacy or plausibility of the reasons for the rejection of its bid given by the contracting officer in her letter, and consequently sought the debriefing, the contracting officer's letter, as stated by one of Fumigadora's own representatives, "constituted notice that the contract had been awarded to another bidder and that [Fumigadora's] bid had been rejected." Moreover, according to another Fumigadora representative in correspondence to the Navy dated March 17, "[w]hat the [contracting officer's] letter does contain is the reason why [Fumigadora's] bid was rejected." Thus, Fumigadora knew the underlying basis for its April 4 protest--the rejection of its bid as unreasonably low priced--on March 14. Even the "real reason" Fumigadora speculates for the rejection of its bid and which it claims was revealed only at the March 31 debriefing--namely, some type of inadequately documented "risk analysis" allegedly conducted by the contracting officer relating to Fumigadora's other contracts--was reasonably apparent from the contracting officer's letter in which she referred to the other contracts in rejecting Fumigadora's bid. Because Fumigadora's protest was filed with our Office more than 10 working days after Fumigadora knew the basis for protest, the protest is untimely and not for consideration on the merits. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2); see Western State Management Servs., Inc., B-214427, Mar. 13, 1984, 84-1 CPD ¶ 305 at 2; aff'd, B-214427.2, Apr. 17, 1984, 84-1 CPD ¶ 437.

Although Fumigadora's protest was filed within 10 days of a debriefing, we note that the challenged procurement was not conducted on the basis of competitive proposals, and the provision in our Regulations relating to the timeliness of protests based on requested and required debriefings, 4 C.F.R. § 21.2(a)(2), is therefore inapplicable.

The protest is dismissed.

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