

K. Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rising Wolf Construction, Inc.

File: B-265765

Date: September 27, 1995

DECISION

Rising Wolf Construction, Inc. protests the cancellation of invitation for bids (IFB) No. 244-95-0004-REL, issued by the Department of Health and Human Services (HHS), for the construction of two community water wells, and the issuance of a revised solicitation for the requirement.

We dismiss the protest.

Rising Wolf states that it submitted the low bid under the initial solicitation. On March 8, Rising Wolf contends that it was informed by the contracting specialist that HHS intended to cancel the solicitation. In response, Rising Wolf sent a letter to the agency's Small & Disadvantaged Business Utilization Office (SDBUO), dated March 14, objecting to the proposed cancellation. On April 17, the protester was notified that the solicitation had been canceled, pursuant to Federal Acquisition Regulation § 14.404-1(c)(1), due to the IFB's defective specifications. The contracting officer advised the firm that the bid schedule and specifications would be revised and the requirement resolicited. On June 16, the agency issued solicitation No. 244-95-0022 with revised specifications. Bids were opened on July 17, at which time the protester's bid was not the lowest received.

On August 4, Rising Wolf filed an agency-level protest. While Rising Wolf asserts that it was protesting the award to another bidder under the subsequent solicitation, a review of its protest reveals that Rising Wolf was, in fact, protesting the agency's cancellation of the original solicitation. The protester contended that, contrary to the agency's allegations, the specifications of the original IFB were not deficient, and therefore concluded that the agency improperly canceled the solicitation. The protester also argued that the cancellation was effected in bad faith and based on favoritism, and constituted a breach of the agency's duty to make award to the low bidder under the original IFB. On August 16, Rising Wolf filed the current protest in our Office raising the same issues as in its agency-level protest.

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Under our Bid Protest Regulations, where a protest is filed first with the contracting agency, a subsequent protest to our Office will be considered only if the initial agency-level protest was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3) (1995); Mobile/Modular Express, B-246183, Nov. 13, 1991, 91-2 CPD ¶ 459. Rising Wolf's protest does not meet this requirement.

Our regulations provide that 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); Health Research Assocs., Inc., B-237075.2, June 8, 1990, 90-1 CPD ¶ 541. Here, Rising Wolf received the agency's notice that it had canceled the original solicitation due to inadequate specifications on April 17. Since Rising Wolf did not protest the cancellation to HHS until August 4, well past the 10-working-day deadline, the initial agency-level protest is untimely and therefore, the subsequent protest to our Office is also untimely.¹

The protest is dismissed.



Paul Lieberman
Assistant General Counsel

¹Although Rising Wolf's March 14 letter to the SDBUO was not an agency-level protest, our conclusion would not change even if it were considered to be such. The agency's notice that it had canceled the solicitation, which Rising Wolf received on April 17, approximately 1 month after its letter to the SDBUO, placed Rising Wolf on constructive notice of adverse agency action; therefore, any subsequent protest to our Office had to be filed within 10 working days of April 17. Since Rising Wolf's protest was filed approximately 4 months after this date, it would still be untimely. See Sunbelt Indus., Inc.-Recon., B-245780.2, Oct. 29, 1991, 91-2 CPD ¶ 399.