



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Arthur D. Little, Inc.

File: B-243450.3

Date: June 19, 1991

Jay P. Urwitz, Esq., Hale & Dorr, for the protester.
Joel R. Feidelman, Esq., and Daniel I. Gordon, Esq., Fried,
Frank, Harris, Shriver & Jacobson, for Science Applications
International Corporation, an interested party.
Jeffrey S. Kessler, Esq., Department of the Army, for the
agency.
Mary G. Curcio, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that agency performed an unreasonable cost realism analysis of protester's proposal is dismissed as untimely when not filed within 10 working days after the date the protester received the documents, submitted as attachments to the agency report on the protest, revealing the protest basis. Computation by the General Accounting Office of the comment due date based on when the protester received the completed agency report did not act as an extension for the due date for filing a protest based on information revealed in the report.

2. Untimely protest will not be considered under the "good cause" exception to timeliness rules where no compelling reason beyond the protester's control prevented the protester from timely filing its protest with the General Accounting Office.

DECISION

Arthur D. Little, Inc. (ADL) protests that the Department of the Army performed an unreasonable cost realism analysis of its proposal submitted in response to request for proposals (RFP) No. DAAA15-90-R-1003.

We dismiss the protest.

The RFP was issued on January 3, 1990, for a contractor to provide program and integration support for the Army's chemical demilitarization program. The RFP contemplated the award of a cost-plus-fixed-fee, indefinite quantity/indefinite delivery contract for three line items, and a firm, fixed-price indefinite quantity/indefinite delivery contract for six line items. Among other things, the RFP provided that cost proposals would be evaluated for cost realism.

On March 20, 1991, the Army awarded the contract to Science Applications International Corporation (SAIC). On March 30, ADL submitted a protest to our Office in which the firm alleged that: (1) in awarding the contract to SAIC the Army failed to follow the evaluation criteria set out in the RFP; (2) the Army did not hold meaningful discussions with ADL; and (3) the Army performed an unreasonable cost realism analysis of SAIC's proposal. On May 3, the Army's report on the protest was received by our Office and by the protester. After we reviewed the report we determined that the protester was entitled to receive two additional documents which the Army had not sent the protester with the report. On May 7, those documents were released to the protester. Since the protester thus only received its complete report on May 7, we computed the due date for the protester's comments from that date and informed the protester that its comments on the report would be due on May 22.^{1/}

On May 22, when ADL submitted its comments on the agency report, it argued that the Army did not perform a reasonable cost realism analysis of ADL's proposal. Since this issue was not raised in the initial protest submission, we treated the

^{1/} Generally, a protester must file comments on the agency report within 10 working days after it receives the agency report. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(k)). Where documents that were withheld from the agency report are subsequently released, the due date for comments is 7 days after the protester receives the released documents. 56 Fed. Reg. 3,759, *supra* (to be codified at 4 C.F.R. § 21.3(h)). Because the documents here were released 2 working days after the protester received the report, if we applied the latter rule, ADL's comments would have been due 9 working days after ADL received the report, which is sooner than they would have been due if no documents had been released. Accordingly, we allowed the protester to file its comments 10 working days after it received the released documents. In addition, the documents were released 1 day earlier than expected. As a result, the protester actually had 11 working days in which to file its comments with our Office.

submission as raising a new ground of protest. On June 5, the Army requested that we dismiss the new protest as untimely.

Our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation be filed no later than 10 working days after the protester knew or should have known of the basis for protest, whichever is earlier. 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.2(a)(2)). When a protester supplements a timely protest with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. John Short & Assocs., Inc., B-239358, Aug. 23, 1990, 90-2 CPD ¶ 150. Here, ADL's protest that the Army failed to perform a reasonable cost realism analysis of ADL's proposal is based on the ADL cost realism evaluation documents that the protester received with the Army's report on May 3, as is shown by the protester's repeated reference to these documents in its challenge to the cost evaluation. ADL therefore was required to raise this issue by May 17, 10 working days later. See Holmes & Narver, Inc., B-239469.2; B-239469.3, Sept. 14, 1990, 90-2 CPD ¶ 210; John Short & Assocs., Inc., B-239358, supra. Further, even if the protest were based on information that the protester received in the additional documents released on May 7, the issue was required to be raised within 10 days thereafter, or by May 21. Since the protester did not raise the issue until May 22, it is untimely. In this regard, we note that our sole reason for permitting ADL to file its comments later than 10 working days after May 3, the date the protester initially received the report, was that the firm did not receive the complete report until May 7. We did not give the firm an extension of the time in which to file a protest. Id.

ADL argues that we should not dismiss the protest as untimely because in its initial protest submission on March 28 the firm in fact challenged the cost realism analysis of its own proposal.^{2/} Specifically, ADL states that in its initial protest it was challenging the Army's cost realism analyses of all offerors' proposals, not just SAIC's. To support this position, the protester points to statements in its initial protest referring to all offerors, such as, "[t]he quantity of labor hours proposed would need to be carefully examined to ensure that the offeror's approach could be conducted to the Army's satisfaction," and "[t]he salary levels of proposed personnel, and their qualifications, would need to be examined across all offerors to understand whether there are

^{2/} We note that since the protester argues that it intended to raise the issue in its initial protest submission on March 28, the protester apparently concedes that it in fact knew of the protest basis much earlier than May 3.

differences among offerors in the quality of personnel proposed."

A reading of ADL's initial protest simply does not support ADL's contention that it challenged the cost realism analysis of all the offerors' proposals, including its own. The statements in its initial protest to which ADL now points to support its position are no more than references to what factors the Army would have to consider generally to perform a proper cost realism analysis. The protester's initial submission shows that the protester's cost realism argument was confined to charging that the Army failed to consider these factors in performing its cost realism analysis of SAIC's proposal; it clearly did not challenge the cost realism evaluation of its own proposal.

ADL also argues that we granted the firm an extension to file its comments on the agency report because the issues involved in the protest were complicated and important and the agency report was voluminous. ADL argues that for these same reasons we should consider the protest pursuant to the good cause exception to our timeliness requirements, 56 Fed. Reg. 3,759 supra (to be codified at 4 C.F.R. § 21.2(b)).

We first note that we did not grant ADL an extension to file its comments; rather, we computed the due date for its comments from the date the protester received its complete report. In any case, the good cause exception to our timeliness rules is limited to circumstances where some compelling reason beyond the control of the protester prevents the protester from submitting a timely protest. Oak Ridge Associated Univs.--Recon., B-238411.2, May 31, 1990, 90-1 CPD ¶ 513. Here, ADL has not demonstrated any reason why it could not have filed a timely protest. Accordingly, we will not invoke the good cause exception to consider the protest.

The protest is dismissed.

Christine S. Melody
Christine S. Melody
Assistant General Counsel