



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Marathon LeTourneau Sales & Service Company--
Reconsideration

File: B-254258.2

Date: August 30, 1993

Lowry C. Wood for the protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office
of the General Counsel, General Accounting Office,
participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest
as untimely is denied where protester essentially reiterates
earlier argument that it reasonably delayed filing agency-
level protest based on belief that contracting officer would
take the requested action.

DECISION

Marathon LeTourneau Sales & Service Company requests recon-
sideration of our decision, Marathon LeTourneau Sales &
Serv. Co., B-254258, Aug. 3, 1993, 93-2 CPD ¶ ____, in which
we dismissed as untimely its protest of a contract award
under request for proposals (RFP) No. N62470-91-R-9277,
issued by the Department of the Navy for remanufacture and
modernization of aircraft crash/salvage cranes.

We deny the request.

In September 1992, the Navy awarded the crane modernization
contract to an offeror other than Marathon. The awardee
(which is not identified in the record) proposed to rebuild
the cranes' electrical systems instead of replacing them
with new components. Marathon believed that this was con-
trary to the RFP requirements; Marathon wrote to the con-
tracting officer on January 21, 1993, asking whether the
awardee in fact was providing rebuilt systems. The con-
tracting officer responded to Marathon's inquiry on
February 4, confirming that the awardee would be rebuilding
the electrical motors and a generator. The contracting
officer further stated that she considered the awardee's
plan to be consistent with the RFP requirements. On
February 11, Marathon again wrote to the contracting
officer, essentially disagreeing with her interpretation of
the RFP and asserting that a revised solicitation should be

issued so that all offerors could compete on an equal basis. Marathon's letter concluded by asking the contracting officer to explain "the proper procedure to follow at this point."

The contracting officer responded on March 4. The letter stated that "although a new solicitation is not justified, you have stated that new electrical components were and are available on the open market, please provide me with the list of market sources and I will further investigate their availability." Marathon provided the requested list on March 17; this letter asked the contracting officer again to consider issuing a new solicitation.

When it had heard nothing further from the agency by June 7, Marathon filed a protest with the contracting officer. The contracting officer denied the protest on July 13, stating that the protest was not filed in accordance with Federal Acquisition Regulation (FAR) § 33.103(b)(2). This section requires that agency-level protests be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier.

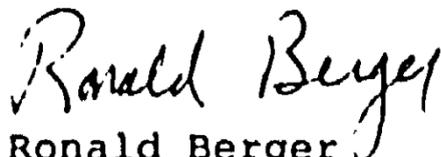
Marathon protested the contracting officer's decision to our Office on July 27, alleging that its agency-level protest was improperly dismissed as untimely because the firm reasonably believed that the contracting officer "still had the matter under consideration." We dismissed the protest, essentially agreeing with the contracting officer that Marathon's agency-level protest was untimely. In this regard, we concluded that Marathon knew no later than February 8, the date it received the contracting officer's February 4 letter, that the awardee planned to provide rebuilt electrical components, and that the agency found this acceptable. We also rejected Marathon's argument that it reasonably believed it did not have a protest basis at that time because the contracting officer was still considering the matter. Since our Bid Protest Regulations provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office (in this case, not later than 10 working days after the basis for protest was or should have been known), and Marathon's June 7 agency-level protest was not filed within this time limit, the subsequent July 27 protest to our Office was clearly untimely. See 4 C.F.R. §§ 21.2(a)(2) and (a)(3) (1993); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

In its reconsideration request, Marathon argues that the record supports the reasonableness of its belief that the contracting officer was still considering the matter after her February 4 letter because she had indicated that she

would accept information from Marathon about electrical equipment suppliers in deciding whether to issue a new solicitation at the end of the base period. In this connection, Marathon asserts that it was not seeking termination of the awarded contract but, rather, resolicitation at the end of the basic performance period in September 1993. Therefore, Marathon contends, there was no need for the contracting officer to act immediately, and it was reasonable for the firm to wait for a response.

Marathon's argument is without merit, as it ignores the connection between the alleged need for a new solicitation and the propriety of the award. As the contracting officer informed Marathon in her February 4 letter, she considered the awardee's proposed method of performance to be consistent with the RFP, and the award therefore to be proper. Thus, as of February 8, when it received the letter, Marathon had no reasonable basis to believe that the contracting officer would consider issuing a new solicitation. Marathon therefore had until February 23 (10 working days after February 8) to file its agency-level protest. Since Marathon had already missed its filing deadline on March 4, when the contracting officer requested new information from Marathon about electrical suppliers, the contracting officer's request did not reasonably indicate to Marathon that the matter was still under consideration, nor did it excuse the firm's earlier failure to protest. It follows that our conclusions--that Marathon's agency-level protest was untimely, and that its subsequent protest to our Office therefore was untimely--were correct.

As Marathon has not established that our decision contained any errors of fact or law, or presented new information that warrants its reversal or modification, the request for reconsideration is denied. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.



Ronald Berger
Associate General Counsel