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SKLuraw



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

215106

Decision

Matter of: Fire-Dex Incorporated
File: B-256387
Date: June 10, 1994

DECISION

Fire-Dex Incorporated protests the terms of invitation for bids (IFB) No. F29650-94-B0002, which was issued by the Department of the Air Force for a quantity of protective clothing for firefighters. Fire-Dex contends that the specifications in the IFB did not include performance requirements or provide standards for testing commercially available materials and garment constructions, and were therefore unduly restrictive of competition. We dismiss the protest as untimely filed.¹

As originally issued, the IFB established a bid opening time of 2 p.m. on January 21, 1994. The bid opening time was extended by amendment No. 00001 to 1 p.m. on February 4. On January 6, Fire-dex wrote to the contracting officer to express its concerns about provisions in the solicitation that it considered restrictive, and by letter of January 19, Fire-dex suggested revisions to those provisions. Fire-dex states that those letters were not intended as protests.² On January 21, the contracting officer replied by facsimile, addressing the concerns Fire-dex had raised. The fax stated that the agency was amending the specifications to add the phrase "or equal" where it had previously specified the brand name "Goretex." On January 24, Fire-dex received a copy of the amendment, which also extended the bid opening date to February 4. On February 7, Fire-dex filed this protest with our Office.

¹The underlying facts which render this protest untimely were not clear until the agency report was filed.

²Even if the letters of January 6 and 19 could be construed as protest letters, the agency denied these protests by fax on January 21. Thus, Fire-Dex's subsequent protest to our Office on February 7, is untimely because it was filed more than 10 working days after the agency denial by fax on January 21. 4 C.F.R. § 21.2(a)(3) (1994).

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

Here, Firedex did not file its protest until after bids had been opened. Accordingly, we dismiss it as untimely.

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for

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