

Protest of ) Date: November 6, 1987  
KINZY STALEY & SONS, INC. )  
Solicitation No. 419980-87-A-0076 ) P.S. Protest No. 87-106

### DECISION

Kinzy Staley & Sons, Inc. (Kinzy), protests the contracting officer's decision to award a contract under Invitation For Bids (IFB) No. 419980-87-A-0076 to Pioneer Construction Company, Inc. (Pioneer), on grounds that Pioneer cannot satisfy the experience requirement of the solicitation.

IFB No. 419980-87-A-0076, issued July 22, 1987, by the Facilities Service Center, Eastern Region, sought bids for repairs to the ceiling area of the Philadelphia Vehicle Maintenance Facility. When bids were opened August 21, Pioneer's bid of \$175,000 was the lowest of three bids received. Kinzy, the third low bidder at \$287,285.50, objected by letter of August 26, to the possible contract award to Pioneer or the second low bidder; it claimed to possess information that they were incapable of satisfying the experience requirement of the solicitation. Because the bids were being evaluated, the contracting officer, in a letter dated September 3, dismissed the protest as obviously without merit since the protest was premature.<sup>1/</sup> By letter dated September 22, contract award was made to Pioneer. Also by letter of September 22, the contracting officer notified Kinzy of the rejection of its bid, noting that Kinzy had not been considered for contract award since its bid was deemed nonresponsive for failing to submit an adequate bid bond. Kinzy's protest states that it received that rejection letter September 22. This protest followed, received by the contracting officer and the Philadelphia Regional Counsel's office October 8.<sup>2/</sup>

### Discussion

We do not reach the merits of the protest. The circumstances of this case are governed by PCM 2-407.8 (d) (3), Timeliness. That section provides, in pertinent part:

[P]rotests must be received not later than 10 working days after information on which they are based is known or should have been

<sup>1/</sup>Kinzy contends the contracting officer failed to respond to its August 26 letter. The contracting officer, however, proffered evidence, a signed Postal Service return receipt, indicating Kinzy received the response September 8.

<sup>2/</sup> Citing PCM 2-407.8 (f) (4), Kinzy's counsel, by letter dated October 26, submitted additional comments in rebuttal to the contracting officer's report. The comments repeated points raised in Kinzy's bid protest.

known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.

The timeliness requirement imposed by this regulation is jurisdictional. We cannot consider the merits of any issue which has been untimely raised. Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986; POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1985. This office has no authority to waive or disregard untimeliness. See Bula Forge, Inc., P.S. Protest No. 86-14, April 23, 1986; Air Transport Association of America, P.S. Protest No. 84-29, May 17, 1984, aff'd on recon-sideration, June 1, 1984.

The basis for the protest, award to Pioneer, a company considered by Kinzy not to possess the experience in gunite application required by the solicitation, became known to Kinzy September 22, when Kinzy received the contracting officer's letter advising of the award to Pioneer. The protest, received by the contracting officer twelve working days after September 22, is untimely, and this office may not consider it. See Bathey Manufacturing Company, P.S. Protest No. 82-29, June 16, 1982; Furman B. Wood, P.S. Protest No. 80-46, August 18, 1980; Cincom Systems, Inc., P.S. Protest No. 76-80, April 25, 1977.

The protest is dismissed.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[checked against original JLS 3/12/93]**