Protest of	)	
	)	Date: March 19, 1992
GF OFFICE FURNITURE, LTD.	)	
	)	P.S. Protest No. 92-07
Solicitation No. 269990-91-A-0642	)	

DECISION

GF Office Furniture, Ltd. ("GF"), protests the award of a contract under Solicitation No. 269990-91-A-0642 for furniture systems for the new General Mail Facility in Carol Stream, IL, to Herman Miller, Inc. ("Herman"). The Minneapolis Procurement Service Office issued the solicitation on September 18, 1991, with an amended offer due date of October 25.

The solicitation was for the provision and installation of furniture systems, consisting of a total of 212 work stations made up of eight work station types. Section M.2 stated that award would be made to the responsible offeror submitting "the best combination of Technical Proposal, Business Proposal (cost/price), Business/Management Proposal (if applicable), and other factors considered." The solicitation stated that price would be considered, but award "may not necessarily be made to that offeror submitting the lowest price." The evaluation factors, listed in descending order of importance, were: Design, Availability, Product Management Services Customer Response, Ease of Maintenance, Flexibility of Changing Floor Plans, Desirable Features, and Workmanship.

Seven proposals were received and evaluated. The evaluation committee rated the two low priced offerors, including GF, as technically unacceptable. Herman, the third low offeror, was rated acceptable and awarded the contract on December 17. On that date, the contracting officer informed the unsuccessful offerors of the award by certified mail. GF received the notification, which included the name of the successful offeror and the contract price, on December 23.

In a letter dated January 13, 1992, received by the contracting officer on January 15, GF protested the award, requesting that "the award process be stopped until we receive official notification as to why we were not chosen as the successful bidder." The contracting officer treated this as a request for a debriefing. On January 22, the contracting officer dismissed GF's protest as untimely and advised that a debriefing would be scheduled. The debriefing took place on January 28, wherein the contracting officer described the technical deficiencies in GF's proposal. During the debriefing, GF reiterated that it should have been awarded the contract due to its low price. The

contracting officer reminded GF that, although price was considered, this was not a price based award.

In a letter dated January 29 and received on February 4, GF protested the contracting officer's decision to this office. In its protest GF takes issue with the contracting officer's untimeliness determination, alleging that GF did not find out until January 8, why, when it offered the lowest price, it had not received award. GF also disagrees with the findings of the evaluation committee, contending that its products meet "all the stringent testing requirements put forth by the GSA . . . ." GF concludes that the decision to award to Herman, at a price in excess of $106,000.00 over GF's offer, was not in the best interest of the Postal Service and was in violation of competition and procurement laws.

In his report, the contracting officer defends his decision, stating that, as award was made on December 17 and GF received the award notification on December 23, the protest was untimely, as received more than ten working days after the information on which it was based was known to GF. The contracting officer also states that the decision to award to Herman was a business decision based on the combination of technical factors and price.

GF submitted comments to the contracting officer's statement, contending that its protest should not have been found untimely because, despite repeated telephone calls to the contracting officer after December 23, it was unable to find out the reason its offer was rejected until January 8.

Discussion

The Postal Service Procurement Manual ("PM") states that protests filed after award "must be received not later than ten working days after the information on which they are based is known or should have been 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." PM 4.5.4 d. The timeliness requirements imposed by our regulations are jurisdictional and we cannot consider the merits of any protest that has been untimely raised. Owens Roofing, Inc., P.S. Protest No. 91-75, December 3, 1991; QMC, Inc., P.S. Protest No. 91-52, December 27, 1991.

The contracting officer and the protester disagree on the date on which the protester "knew or should have known" the basis for its protest. The contracting officer views the protest as being based solely on the fact that a higher priced offer was accepted. The contracting officer subsequently based his untimeliness determination on the fact that the protester knew by December 23 what the award price was. Under these facts, the protest would have to have been received by January 8. The protester, on the other hand, contends that it did not know the basis for its protest until January 8, rendering its protest, received by the contracting officer January 15, as timely. We are inclined to agree with the contracting officer that the primary basis for the protest is the issue of price, and that the protest was untimely as made more than ten working days after that basis was known. We need not resolve the matter with certainty, however. Under the provision of PM 4.5.4 d., quoted above, no protest received more than fifteen working days after contract award may be considered. That date was January 9. GF did not file a protest within the required time limits.

This protest is dismissed.

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