



Decision

Matter of: Asahi General Trading & Contracting Company

File: B-417650

Date: July 24, 2019

Ahmad Al-Far for the protester.
Robin E. Walters, Esq., Defense Logistics Agency, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where protest to our Office raises the same issues as those presented in a prior agency-level protest that was not timely filed, the protest to our Office is not timely filed.

DECISION

Asahi General Trading & Contracting Company, of Safat, Kuwait, protests the Defense Logistics Agency's (DLA) "planned award of a new, non-competitive, six-month [scrap sales] contract to Royal Bridge International (RBI)." Protest at 1. Asahi asserts that the award of a "bridge contract" to RBI "lacks a valid legal basis" and should, rather, be given to Asahi as an extension to Asahi's incumbent contract. Id at 1-2.

We dismiss the protest because an initial protest to the agency was not timely filed.

Asahi states that it has been performing the requirements at issue since 2014. On April 23, 2019, Asahi met with the agency to discuss various matters regarding its then-ongoing contract and, during that meeting, Asahi requested a contract extension. The agency responded that no contract extension would be given, and that a 6-month scrap sales contract would be given to RBI, pursuant to DLA's authority to dispose of foreign excess property. Protest at 1; DLA Dismissal Request, June 24, 2019, at 2. Asahi responded to the agency's notification that no contract extension would be issued, and that the requirements would be performed by RBI, by expressing various criticisms and complaints.

On May 3, the agency responded to Asahi's various complaints in an email that, among other things, confirmed the agency's prior statement that Asahi's contract would not be extended and that DLA intended to award a 6-month contract to RBI, pending DLA's

subsequent issuance of a competitive solicitation for the requirements. Protest, attach. A, DLA email to Asahi, May 3, 2019.

On May 23, Asahi filed an agency-level protest asserting, among other things, that “the planned contract award lacks a valid legal basis, violates applicable law and regulation and is otherwise improper from a business judgment standpoint.” Protest, attach. B, Asahi Agency-Level Protest, at 2. Asahi complains that the agency did not immediately respond to its agency-level protest; accordingly, on June 9, Asahi filed this protest with our Office, essentially repeating the complaints contained in its agency-level protest.

On June 24, the agency submitted a dismissal request asserting, among other things, that Asahi’s agency-level protest was not timely filed and that, similarly, Asahi’s June 9 protest to this Office was untimely.¹

On June 27, Asahi responded to the agency’s dismissal request by: noting that Asahi personnel “are Kuwaiti businessmen, not lawyers”; stating that it was Asahi’s action in hiring a legal consultant on May 14, 2019 that “gave rise to the 10-day filing requirement”; and asserting that “[a]ccordingly, Asahi’s May 23, 2019 Agency-level protest was timely filed.” Asahi Response to Dismissal Request, June 27, 2019, at 3.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest of other than an alleged apparent solicitation impropriety must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest. 4 C.F.R. § 21.2(a)(2). In this regard, a matter that is initially protested to the contracting agency will only be considered timely by our Office if the initial agency-level protest was filed within the time limits provided by the Regulations for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Our 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. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, the record is clear that Asahi’s May 23, 2019 agency-level protest was filed more than 10 days after Asahi knew or should have known of its basis for protest. Specifically, Asahi acknowledges that it was informed during the April 2019 meeting with DLA that a contract for the requirements at issue “would be awarded to RBI.”

¹ The agency also asserts that, because the agency did not issue a solicitation in connection with the contract awarded to RBI, GAO is not authorized to consider Asahi’s protest. However, in 1987, DLA formally requested that GAO “consider bid protests filed with [GAO] relating to Defense Logistics Agency surplus sale offerings conducted pursuant to the Federal Property and Administrative Services Act of 1949.” DLA Dismissal Request, attach. 1, Letter from DLA to GAO, Jan. 13, 1987. On this record, and in light of our determination that Asahi’s protest was not timely filed, we decline to dismiss the protest based on DLA’s assertions regarding GAO’s authority.

Protest at 1. Further, the agency's May 3 email specifically stated that the contract to RBI would be awarded pursuant to the agency's authority to dispose of foreign excess property. Finally, Asahi's assertion that its personnel "are Kuwaiti businessmen, not lawyers" does not constitute a basis for waiving our timeliness rules.² In short, Asahi either knew or should have known of its basis for protest no later than May 3; yet, it did not file its agency-level protest until May 23. On this record, Asahi's protest is untimely and will not be considered.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

² Asahi asserts that, even if untimely, we should review its protest pursuant to the "significant issue" exception to our timeliness rules. See 4 C.F.R. § 21.2(c). We consider allegations under the "significant issue" exception sparingly, so that our timeliness rules do not become meaningless, and we limit such consideration to issues of widespread interest to the procurement community. See Scipar, Inc., B-220645, Feb. 11, 1986, 86-1 CPD ¶ 153 at 5. Here, we do not view the agency's award of a 6-month sales contract, pending issuance of a competitive solicitation for these requirements, as constituting a matter of widespread interest to the procurement community.