



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: General Physics Federal Systems, Inc.

File: B-274795

Date: January 6, 1997

William M. Weisberg, Esq., William T. Welch, Esq., and Monica C. Gray, Esq., Barton, Mountain & Tolle, for the protester.

James J. McCullough, Esq., Joel R. Feidelman, Esq., Catherine E. Pollack, Esq., and Lawrence E. Ruggiero, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation, an intervenor. Edward L. Williamson, Esq., Department of the Army, for the agency. Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, General Accounting Office, participated in the preparation of the decision.

DIGEST

1. Protest against acceptance of offer that included proposal to use as a subcontractor the United States Department of Agriculture Graduate School (USDAGS) is dismissed as untimely; record shows that protester was advised at time of award that successful offeror proposed to use USDAGS to perform contract, and was further advised of the agency's position that this was legally permissible, but failed to diligently pursue publically available information that may have established basis for protest at that time.
 2. Protest contentions based on information obtained by protester in connection with other untimely allegations are dismissed as untimely; had protester diligently pursued original basis for protest, information allegedly supporting additional arguments would have been obtained earlier and additional arguments would have been raised at that time.
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DECISION

General Physics Federal Systems, Inc. (GPFS) protests the award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. DASW01-96-D-0033, issued by the Department of the Army for services in connection with various education and training programs. GPFS principally maintains that SAIC improperly proposed The United States Department of Agriculture Graduate School (USDAGS) as a subcontractor, and now intends to substitute another subcontractor.

We dismiss the protest as untimely.

The Army awarded this contract to SAIC on May 10, 1996, and notified the unsuccessful offerors by letter of that same date, which also included a listing of SAIC's subcontractors, including the USDAGS. On May 16, the protester was provided a debriefing, during which (and in another telephone call conducted immediately thereafter) the protester's representative and agency officials discussed whether the USDAGS was authorized to perform as a subcontractor for SAIC; the agency advised the protester of its view that this was permissible and provided the firm with copies of several decisions of our Office that the agency believed supported its view.

The protester states that on September 17 it was asked by representatives of SAIC whether it was interested in performing the portion of the contract that originally was to be performed by the USDAGS. GPFS states that it also learned at about this time that the agency intended to execute a modification to SAIC's contract that was beyond its original scope. Based on this information, GPFS filed this protest, arguing that SAIC proposed, and was evaluated on the basis of using, the USDAGS as a subcontractor, but that it now plans to switch to a different subcontractor.¹ GPFS asserts that both SAIC and the agency knew that SAIC would not use the USDAGS to perform because the USDAGS' charter did not permit it to perform as a subcontractor. GPFS also alleged for the first time in its comments responding to the agency report that the Army had improperly failed to make award to GPFS on the basis of initial proposals, and that the discussions with SAIC were improper due to prohibited technical leveling and/or technical transfusion.

Our Bid Protest Regulations contain strict rules for the timely submission of protests, and those protests based on other than alleged solicitation improprieties must be filed no later than 10 calendar days after the protester knew or should have known of its basis for protest, whichever is earlier. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). Moreover, a protester has an affirmative obligation to diligently pursue information that forms the basis for its protest and must do so in a reasonably expedient manner considering the circumstances of the case. Technology Management & Analysis Corp., B-256313.3; B-256313.5, May 9, 1994, 94-1 CPD ¶ 299. GPFS failed to diligently pursue the information necessary to advance its protest.

¹SAIC also argued that the Army intended to execute an improper out-of-scope modification to the original contract, but it subsequently withdrew this allegation.

At the heart of GPFS's protest is its assertion that the agency and SAIC knew or should have known--i.e., that it was foreseeable--prior to award that the USDAGS could not perform as a subcontractor.² However, this is an argument GPFS could and should have made shortly after its May debriefing and follow-up telephone conversations. In this regard, neither of the decisions the Army cited in support of its position addressed the USDAGS' authority to subcontract with a government prime contractor, and both decisions, when read together with the cases cited therein, effectively put GPFS on notice that USDAGS' authority is established in its charter.³ This being the case, it was unreasonable for GPFS merely to accept the Army's position without further examination or inquiry, by at least obtaining the charter. GPFS itself states that a copy of the USDAGS charter is publicly available, and it included a copy of the charter with its comments on the agency report; the protester nevertheless waited approximately 4 months to obtain and examine a copy of the USDAGS' charter. While USDAGS' withdrawal from the contract may have been the event which led GPFS to conclude that an improper change in subcontractors occurred and to investigate the matter further, had GPFS been diligent following the award it would have become aware of SAIC's need to switch subcontractors--and thus the basis for this protest argument--at that time. We conclude that the protest is untimely at this juncture.⁴

GPFS' remaining allegations--that the agency should have made award on the basis of initial proposals and engaged in improper discussions with SAIC--also are untimely. These arguments are based on information contained in the agency's report in response to GPFS' original protest. Since that original

²The basis for GPFS' assertion is its reading of the USDAGS' charter which, according to the protester, prohibits the USDAGS from acting as a subcontractor to a "for-profit" entity such as SAIC; in its pleadings, GPFS describes these actions as an improper "bait and switch" on the part of SAIC.

³We note in particular that our decision, Department of Agriculture Graduate School, 64 Comp. Gen. 110 (1984), specifically states that a nonappropriated funds instrumentality such as the USDAGS "may compete in and be awarded a contract under a competitive procurement unless otherwise precluded by its charter from doing so." 64 Comp. Gen. supra, at 112. (Emphasis added.)

⁴In Arthur Andersen LLP, B-274795.2, Nov. 25, 1996, an unpublished decision, which concerned the same solicitation in issue here, we concluded, as we do here, that the protester failed to diligently pursue the issue of the propriety of SAIC's proposing the USDAGS as a subcontractor after being presented with the agency's position and supporting decisions.

protest was untimely for lack of diligent pursuit, it follows that these remaining allegations are untimely; had GPFS diligently pursued the information forming the basis for its original protest, it would have obtained much earlier the report information on which its additional arguments are founded. See Technology Management and Analysis Corp., supra (timeliness rules are not governed by the discretionary acts of the protester in, for example, intervening in another concern's protest and fortuitously discovering information that forms a basis for protest); see also Intercomp Co.--Recon., B-265638.2; B-265639.2, Feb. 22, 1996, 96-1 CPD ¶ 110.

The protest is dismissed.

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