Protest of	)	Date: September 4, 1991
	)	
DONALD CLARK ASSOCIATES, INC.	)	
	)	
Solicitation No. 169986-91-A-0018	)	P.S. Protest No. 91-34

DECISION

Donald Clark Associates, Inc. ("DCA"), protests its elimination from the competitive range in a solicitation for a professional services contract. It contends the evaluation committee allowed it insufficient time to respond to the committee's request for additional information after receipt of initial offers.

Solicitation No. 169986-91-A-0018 was issued on January 31, 1991 and sought offers for the providing of professional services for a one year period with an option of two (2) one year extensions. The offer due date for the solicitation was March 26, 1991. The evaluation criteria for the solicitation was based upon: a) the contractor's Total Quality Management (TQM) Program; b) the contractor's ability to meet the requirements of the contract; and c) the financial stability of the firm.

Twelve offers were received by the Chicago FSC, six of which were found technically unacceptable. The evaluation committee interviewed the offerors within the competitive range, including DCA. During these interviews, the firms were asked to amplify various aspects of their proposals, and each firm was given a three-day time period to respond to the various deficiencies noted by the Committee.[1/]

DCA was interviewed on May 10, 1991. At the conclusion of the interview, DCA was asked to submit a written response to the noted deficiencies by May 13; DCA timely submitted its response. Subsequent to the interview and after review of DCA's response, the Committee concluded that DCA's overall technical rating was low, and that DCA had failed to overcome deficiencies contained in its proposal.

On June 4, DCA was informed, by letter, that it had been excluded from the competitive range due to its insufficient rating. On June 11, the FSC received a

[1/] Extra time was allowed for the response when an offeror requested it. In fact, four of the firms participating in interviews for the solicitation were given several days additional time in which to submit their responses. DCA did not request additional time, and submitted its response within the three-day time period.

request from DCA for a debriefing and complied with DCA's request. On June 12, the FSC received a copy[1/] of the protest from DCA contesting the amount of time it was given in which to submit a response. The contracting officer, with the concurrence of assigned counsel, rejected DCA's protest as obviously without merit by letter dated June 24, 1991. Meanwhile, GAO forwarded the protest to the Postal Service. This office received it on June 20 and docketed the protest on June 21.

In its protest, DCA argues that "the time constraint in submitting a response to the list of deficiencies and clarifications was unfair." DCA requests that "a determination be made as to whether the time period allowed for response was sufficient or not." DCA acknowledges that it complied with the May 13 deadline by faxing the requested information to the Postal Service by 5:00 p.m. on that date.

The contracting officer's statement relates that at the conclusion of the May 10 interview when DCA was asked to submit its response by close of business on May 13, DCA did not request a time extension. DCA submitted its response on time, and the contracting officer found the response to be complete. The contracting officer contends that the protest is untimely, filed "one month after the event on which it is based took place."

In its supplemental response to the contracting officer's statement, DCA argues that its protest was timely as it was filed within ten days of being notified that it was no longer in the competitive range. DCA reiterates its argument that the time it was allowed to respond to the clarifications and deficiencies was not reasonable, and complains that, unknown to it, its competitors were granted additional time to supply the information.

The Orkand Corporation, which was awarded the contract, submitted comments to the protest. It argues that DCA's protest is unfounded and that the time provided to the participating firms by the Chicago FSC "to respond to the clarifications and deficiencies were more than sufficient."

DECISION

The threshold issue in this matter is whether DCA's protest was timely filed. It is well settled that the requirement that a protest be timely filed is jurisdictional and cannot be waived. See Alabama Metal Products, Inc., P.S. Protest No. 91-20, May 7, 1991; Plymouth Mobile Washing, Inc., P.S. Protest No. 91-15, May 10, 1991; Pitney Bowes, Inc., P.S. Protest 89-86, December 20, 1989.

PM 4.5.4 d requires that in cases other than protests to the solicitation itself ". . . protests must be received not later than ten working days after the information on

[2/]DCA's protest was addressed to the General Accounting Office. However, the General Accounting Office does not have jurisdiction to consider protests arising out of Postal Service contracting practices. PM 4.5.1.; Falcon Systems, Inc., 65 Comp. Gen. 584 (1986).

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."

From the above facts, it is apparent that DCA's June 12 protest is untimely as it was filed well after ten working days from May 10, the date DCA knew of the three-day time limit for the submission of its response.[1/] DCA argues that its protest is timely because it was filed within ten days after DCA received notice that it was removed from the competitive range. However, there is no evidence, and DCA does not suggest, that allowing only three days for submission of the requested information was the cause of DCA's elimination from the competitive range. On the contrary, the contracting officer stated that the response was complete. Even if the three-day submission schedule prejudiced DCA, all the information which could have formed the basis for a protest based on prejudice resulting from the response period was known to DCA by May 13 at the latest. Its time for filing began at that point and its failure to protest timely requires that the protest be dismissed. Our protest regulations require the prompt raising of protests and do not allow an offeror to sit quietly with a possible basis for a protest to see how he fares in the competition, raising the protest only if he does not succeed.

The protest is dismissed.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 8/12/93]

[3/]In fact, the protest was filed more than ten working days after the May 13 submission, which would have been the latest possible date on which DCA would have been aware that the three days allowed for submission of the additional information was inadequate.