



## Decision

**Matter of:** Baldt Inc.

**File:** B-402596.3

**Date:** June 10, 2010

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Glenn S. Suplee for the protester.

Theresa A. Chestnut, Esq., Department of the Navy, Naval Supply Systems Command, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that an award using simplified acquisition procedures was improper because the awardee's price exceeded the simplified acquisition threshold, and that agency should re-compete its requirements using sealed bidding or contracting by negotiation procedures rather than using simplified acquisition procedures, is untimely where the protester knew or should have known, prior to submission of quotations, that the agency may not have had a reasonable expectation that its requirements could be acquired within the simplified acquisition threshold.

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### DECISION

Baldt, Inc., of Chester, Pennsylvania, protests the award to Lister Chain and Forge, Inc., of Blaine, Washington, under request for quotations (RFQ) No. N00244-10-T-0091, issued by the Department of the Navy, Naval Supply Systems Command, for non-magnetic stud link chain.

We dismiss the protest.

The RFQ was issued using simplified acquisition procedures for a non-magnetic stud link specialized chain, and the RFQ included Federal Acquisition Regulation (FAR) clause 52.213-4, Terms and Conditions -Simplified Acquisitions (Other Than Commercial Items).

Baldt's quote was \$864,000, and Lister's quote was \$720,000. Award was made to Lister, and Baldt protested to our Office, complaining that the award exceeded the simplified acquisition threshold.<sup>1</sup> Baldt requests our recommendation that the Navy terminate the contract and resolicit the requirements using either sealed bidding or contracting by negotiation procedures. Protest at 4.

We find that the protest is untimely and not for consideration by our Office. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (2010). Underlying our timeliness rules regarding solicitation improprieties is the principle that challenges which go to the heart of the underlying ground rules by which a competition is conducted, should be resolved as early as practicable during the solicitation process, but certainly in advance of an award decision if possible, not afterwards. Continental Staffing, Inc., B-299054, Jan. 29, 2007, 2007 CPD ¶ 18 at 4-5. Such a rule promotes fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government as well as other offerors, by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process, potentially armed with increased knowledge of its competitors' position or information. See also Blue & Gold, Fleet, L.P. v. United States, 492 F.3d 1308, 1313-14 (Fed. Cir. 2007). It also promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. Id.

The essence of Baldt's allegation is that the agency should not have used simplified acquisition procedures to procure the items at issue here, and that, given the amount of the quotes, no award is possible under the solicitation (including an award to Baldt). However, Baldt knew, or should have known, prior to the time set for receipt of quotes, that its own quote would be priced more than eight times higher than the simplified acquisition threshold, and that any resulting contract would likely exceed the threshold. We find that Baldt was required to protest the agency's use of the simplified acquisition procedures prior to the closing time, rather than waiting till after award. Accordingly, Baldt's post-award protest is untimely.

Baldt argues that we should consider its protest under our "good cause" or "significant issue" exceptions to our timeliness rules. See 4 C.F.R. § 21.2(c). The "good cause" exception is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. Dontas Painting Co., B-226797, May 6, 1987, 87-1 CPD ¶ 484 at 2. The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community, and which have not been considered on the

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<sup>1</sup> The simplified acquisition threshold for such items is \$100,000. See FAR § 2.101.

merits in a prior decision. Schleicher Cmty. Corrs. Ctr., Inc., B-270499.3 et al., Apr. 18, 1996, 96-1 CPD ¶ 192 at 7. Baldt has not demonstrated a compelling reason beyond the protester's control that prevented the protester from filing a timely protest, and therefore there is no basis to invoke the "good cause" exception. Also, the record does not show that the issues raised are of widespread interest to the procurement community that would otherwise warrant their resolution in the context of an otherwise untimely protest. See Critical Process Filtration, Inc., B-400746 et al., Jan. 22, 2009, 2009 CPD ¶ 25 at 6; Global Commc'ns Solutions, Inc., B-299044, B-299044.2, Jan. 29, 2007, 2007 CPD ¶ 30 at 3.

The protest is dismissed.

Lynn H. Gibson  
Acting General Counsel