

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-186988

DATE: September 7, 1976

MATTER OF: GTE Sylvania, Incorporated

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DIGEST:

Protest of "imminent" award to significantly higher offeror which is filed more than 10 working days after agency debriefing is untimely filed and ineligible for consideration on the merits where protester's submissions indicate protest is actually directed against rejection of protester's proposal as technically unacceptable. Objections to agency's technical evaluation of proposal do not raise significant procurement issue.

The issue under consideration is whether the protest of GTE Sylvania, Incorporated, under request for proposals (RFP) No. 5-86460/187, issued by the National Aeronautics and Space Administration's (NASA) Goddard Space Flight Center, has been timely filed under our Bid Protest Procedures, 4 C.F.R. Part 20 (1976).

By telegram of July 19, 1976, received in this Office on July 20, 1976, GTE protested NASA's rejection of its proposal. GTE was first informed of that rejection by NASA's letter of June 9, 1976, which set out with specificity some of the major areas in which the proposal was considered deficient. Upon receipt of that letter, GTE requested a debriefing which was conducted on June 29, 1976. According to GTE, it then learned in "mid-July * * * of NASA's intention to award a contract * * * to [its] sole competitor at an approximate price of * * * more than \$700,000 greater than Sylvania's offer. [This] * * * was Sylvania's first knowledge that its bid was low, and very substantially lower at that, than the competitor's price." The protest telegram of July 19 (and a subsequent letter dated August 19, 1976, protesting related matters revealed at the debriefing) followed.

Our Bid Protest Procedures require that protests be "filed" not later than 10 [working] days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. 20.2(b)(2). The term "filed" means receipt in the contracting agency or this Office as the case may be. 4 C.F.R. 20.2(b)(3).

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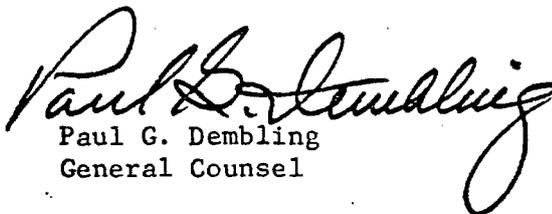
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It is GTE's position that the basis of its protest was an imminent award at a higher price to its sole competitor and that the 10 day period should be computed from the date GTE learned of that imminent award.

We disagree. The protest clearly is against the exclusion of the protester's proposal from the competitive range. In this regard, a review of GTE's submissions indicates that the protester's basic position is that NASA acted arbitrarily in finding deficiencies in its "substantially conforming" proposal and that, had adequate technical discussions been held, the deficiencies would not have existed. Thus, we think it is clear that GTE's protest is actually founded on its objections with regard to proposal evaluation and adequacy of discussions, and not on the fact that award was to be made at a higher price to another offeror. Since GTE was aware of the bases for protest not later than June 29, we are of the view that the 10 day period must have commenced to run from that date. Accordingly, we consider the protest as untimely filed and ineligible for our consideration on the merits.

GTE contends that if we regard the protest as untimely, we should consider it as raising a significant procurement issue in accordance with 4 C.F.R. 20.2(c). That issue, states GTE, involves "unbridled agency discretion" in evaluating proposals.

The significant issue exception to the timely filing requirement must be exercised sparingly if our timeliness standards are not to become meaningless. COMTEN, B-185394, February 24, 1976, 76-1 CPD 130, affirmed B-185394, May 18, 1976, 76-1 CPD 330. Thus, we will not regard an issue as significant unless it is of widespread interest or goes to "the heart of the competitive procurement process." Williamette-Western Corporation, et al., 54 Comp. Gen. 375, 376 (1974), 74-2 CPD 259; 52 Comp. Gen. 20 (1972). We do not believe the objections raised here, concerning the technical evaluation of a proposal for a particular procurement, meet this standard. See Dumont Oscilloscope Laboratories, Inc., B-186379, June 22, 1976, 76-1 CPD 398; Fairchild Industries, Inc., B-184655, October 30, 1975, 75-2 CPD 264. Accordingly, we remain of the view that the matter is ineligible for our consideration on the merits.


Paul G. Dembling
General Counsel