

DOCUMENT RESUME

03602 - [A2513651]

[Untimely Protests]. B-189946. September 7, 1977. 3 pp.

Decision re: Entwistle Co.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Department of the Air Force: Warner
Robins Air Logistics Center, GA; Transequip Co.
Authority: 4 C.F.R. 20.2(b) (1-2).

The protester objected to award of a contract, arguing that the awardee intended to use material that was nonconforming and that the solicitation specifications were defective. The protest against the agency's acceptance of the awardee's proposal was untimely since it was filed more than 10 days after the protester was advised by the agency of its intent to accept the proposal. The protest against the solicitation specifications was untimely since it was filed after the closing date for the receipt of initial proposals. (Author/SC)

Ayer
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DECISION



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

FILE: B-189946

DATE: September 7, 1977

MATTER OF: The Entwistle Company

DIGEST:

Protest of agency's acceptance of proposal, filed with GAO more than 10 days after protester was advised by agency of its intent to accept such proposal, is untimely. Moreover, protest alleging defects in solicitation specifications first filed after closing date for receipt of initial proposals is untimely.

The Entwistle Company (Entwistle) protests the award of a contract to the Transequip Company (Transequip) under request for proposals (RFP) No. F09603-77-R-0601 issued by the Warner Robins Air Logistics Center (Air Force) for aircraft cargo restraint assemblies. Although Transequip was the successful offeror, Entwistle argues that it was the only offeror capable of complying with the requirements of the solicitation and that it should be awarded the contract.

Entwistle developed, manufactured and tested the type of cargo restraint assembly which the Air Force now seeks to procure on a competitive basis. Entwistle contends that the Air Force requires a product that meets the performance characteristics of the Entwistle product and states that it is Entwistle's opinion that "unless the materials and components are the same as previously supplied, the results cannot be comparable." It is Entwistle's belief that it is the only firm currently possessing the detailed technical information necessary to successfully perform the contract.

Entwistle urges that its protest should be sustained on four grounds. First Entwistle believes that Transequip intends to use material that is nonconforming. The

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RFP requires that certain materials be either source control or equal. Entwistle claims to have been advised by the designated source that it will not produce the required material or an equivalent material. Entwistle further claims that it has the knowledge to produce an equivalent material. However, the Air Force, by letter of August 2, 1977, advised Entwistle that Transequip had certified that its proposal was based on the source control material.

The Air Force further advised that:

"As a result of the reviews, we consider the solicitation to be appropriate and proper and are proceeding with the award."

The Air Force gave Entwistle until August 12, 1977 to advise if Entwistle thought that such an award would be improper. The Entwistle protest was received at this Office on August 23, 1977, more than 10 days after notification of adverse agency action. We believe that this aspect of Entwistle's protest to GAO is untimely, it being lodged more than 10 days after the basis of protest was known or should have been known, 4 C.F.R. § 20.2(b)(2) (1977). This is true even if 5 days is allowed for the Air Force's August 2, 1977, communication to reach Entwistle.

Entwistle's second, third and fourth grounds of protest turn on alleged deficiencies in the Air Force solicitation. The second ground is that the solicitation fails to provide a specification for performance of first article testing. The third ground, a corollary of the second, contends that in the absence of a specification for performance of first article testing only Entwistle, whose equipment has already been tested, is in a position to make a meaningful offer. The fourth ground contends that the solicitation is defective in not specifying the materials of which a component "equal" to one of the principal components of the cargo restraint assembly must be fabricated. Likewise it is

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urged that the solicitation fails to provide performance criteria which such an "equal" component must meet. 4 C.F.R. § 20.2(b)(1) (1977) provides that protests based upon alleged improprieties in a RFP which are apparent prior to the closing date for the receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals. We must therefore conclude that these aspects of Entwistle's protest are also untimely filed and not for consideration by this Office on the merits.

for *Winston J. Aorolan*
Paul G. Dembling
General Counsel