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**DECISION**



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

**FILE:** B-191424

**DATE:** July 20, 1978

**MATTER OF:** Mil-Air, Inc.

**DIGEST:**

1. Where protester's letter shows it was orally notified of proposal rejection and reason therefor prior to February 10, and there was no protest to agency, protest to GAO on March 15 is untimely because it was not filed within 10 working days after basis for protest was known or should have been known, as required by section 20.2(b)(2), GAO Bid Protest Procedures.
2. Issues concerning RFP requirement that technically restricted parts be procured from approved sources and rejection of protester's proposal for noncompliance with this requirement are not viewed as "significant" within meaning of section 20.2(c), Bid Protest Procedures, so as to justify consideration of untimely protest on merits.
3. Burden is on protester to substantiate its case. In carrying out protest decision function GAO will not conduct investigations to establish whether protester's speculative statements are valid.
4. There is no impropriety in contracting officer notifying other offerors of protest and affording them opportunity to submit their views to him. Armed Services Procurement Regulation § 2-407.8(a)(3) (1976 ed.) requires such notice to offerors affected by protest.
5. Claim for proposal preparation costs based upon issues in protest which was not timely filed with GAO will not be considered.

This is our decision on a protest by Mil-Air, Inc., concerning the rejection of its proposal under request for proposals (RFP) No. N00383-78-R-0193, issued by the Navy Aviation Supply Office (ASO), Philadelphia, Pennsylvania.

The protester maintains that in accordance with the RFP, which was marked "unrestricted," its proposal offered to furnish the supplies called for (aircraft engine piston pins), that it was to obtain from a source which supplied the same parts to the Air Force a number of years ago. Mil-Air points out that at the Navy's request it furnished a blueprint of the pin, that it offered to perform first article testing, and that acceptance of its proposal would save the Government money.

The Navy responds that the synopsis of the procurement in the Commerce Business Daily clearly indicated that the RFP was being issued only to 3 approved sources and that additional proposals were not being solicited. The agency also asserts that notwithstanding the "unrestricted" marking on the cover page of the RFP, the solicitation read as a whole indicated that this competitive procurement involves technically restricted parts, since section F621 of the specifications provides that the supplies must be furnished in accordance with one of the 3 approved sources' drawings. The Navy points out that the parts require special qualification testing, and, under applicable regulations, may be procured only from approved manufacturing or nonmanufacturing sources, citing Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD 45. The agency reports that as neither Mil-Air nor its supplier is currently listed as an approved source, the protester's proposal was properly rejected. Also, the Navy believes the protest is untimely.

After proposals had been submitted by Mil-Air and other concerns, and sometime prior to February 10, 1978, Mil-Air apparently received oral notification that its proposal was rejected. In this regard, a letter sent by Mil-Air to its Congressman dated February 10, 1978, states in part:

"We were informed last week that our bid would not be accepted because we did not have a letter from the Air

Force or Navy saying that we were  
qualified to provide the pin. \* \* \*

\* \* \*

"We found that the supervisor  
of the technical liaison section  
[at ASO] had turned down our bid.  
His reason was simply that we could  
not show proof that we're capable  
of making the pin to correct speci-  
fications. Proof would be in the  
form of a letter from the Air Force  
or Navy saying that we had provided  
a properly tested pin in the past.  
He said we were not on the approved  
list. \* \* \*

\* \* \*

"Our attorney is filing a  
protest with the G.A.O. \* \* \*

While the protester has subsequently elaborated on  
the oral communications between it and the Navy concern-  
ing the rejection of its proposal, we believe this con-  
temporaneous statement is the best indication of Mil-Air's  
knowledge and understanding of the matter at the time.

The protest was filed with our Office on March 15,  
1978, by letter from Mil-Air's counsel. Because of  
the sequence of dates discussed in the letter, we  
immediately requested Mil-Air's counsel to furnish a  
statement addressing the timeliness of the protest.  
Counsel's March 28, 1978, response, which asserted  
that the protest was timely, did not discuss or  
include a copy of Mil-Air's February 10, 1978, letter  
to its Congressman. This letter was brought to our  
attention for the first time in the Navy's June 12,  
1978, report responding to the protest.

The Navy maintains the protest is untimely  
because (1) it is based on alleged apparent

improprieties in the RFP which Mil-Air was required to protest before submitting its proposal (section 20.2(b)(1), GAO Bid Protest Procedures, 4 C.F.R. Part 20 (1977)), and/or (2) it was not filed within 10 working days after the basis for protest was known or should have been known, whichever is earlier (4 C.F.R. § 20.2(b)(2)). As we find Mil-Air's protest is clearly untimely on the latter basis it is unnecessary to discuss the former.

Where a bidder or offeror receives oral notice from the contracting agency that its bid or proposal is rejected along with a statement of the reasons for the rejection sufficient to put it on notice of its basis for protest, and the bidder or offeror does not timely protest to the agency, any protest to our Office must be filed within 10 working days after receipt of the oral notice. See Service Enterprises, Inc., B-190410, April 4, 1978, 78-1 CPD 266; The Public Research Institute of the Center for Naval Analyses of the University of Rochester, B-187639, August 15, 1977, 77-2 CPD 116; Southwest Aircraft Services, Inc., B-188483, April 1, 1977, 77-1 CPD 227.

In the present case, Mil-Air alleges that in February 1978 it orally requested ASO to " \* \* \* give us the reasons for rejection of the bid in writing", that it was told by ASO such a letter would be sent, but that it did not receive any "concrete explanation" until the Navy by letter of March 3, 1978, responded to a February 21, 1978, inquiry from its Congressman. In this regard, a promise to provide written notification merely repeating reasons given orally for rejection of a bid or proposal does not toll the time limits for filing a protest to our Office. See Service Enterprises, supra. Further, the Congressman's February 21 letter to the Navy on behalf of Mil-Air was clearly a request for information, not a protest (see Lion Recording Services, Inc.-- Reconsideration, B-188768, November 15, 1977, 77-2 CPD 366, and decisions cited therein) nor does the record otherwise indicate any protest

by Mil-Air to the Navy. In any event, the Navy's one-page March 3 letter does not materially add to the information Mil-Air possessed prior to February 10 as to the reasons for rejection of its proposal.

In view of the foregoing, we believe that since Mil-Air knew the basis for its protest prior to February 10, 1978, its protest filed with our Office on March 15, 1978, is untimely and not for consideration because it was not filed within 10 working days after the basis for protest was known.

Mil-Air also states that as far as timeliness is concerned it should suffice to say that within a day or two after oral notification that its proposal was unacceptable it showed immediate concern by contacting several Navy officials, SBA, its Congressman and its attorney. However, an interested party wishing to protest to our Office must file its protest directly with our Office within the prescribed time limits. See, in this regard, 4 C.F.R. § 20.1(b); Karl Doll GmbH, B-187109, August 30, 1976, 76-2 CPD 205. Also, consultation with counsel is not a valid basis for extending the protest filing time limits. Kappa Systems, Inc., 56 Comp. Gen. 675, 687 (1977), 77-1 CPD 412.

Mil-Air contends that its protest, if untimely, should nonetheless be considered under the "significant issue" exception to our timeliness standards (4 C.F.R. § 20.2(c)), because of the substantial dollar savings to the Government, the issue of the Government's duty to advise bidders of pre-qualification restrictions, and the issue of the duty of one branch of the Department of Defense to consult the records of other branches.

A "significant issue" has been described as one which involves a procurement principle of widespread interest (52 Comp. Gen. 20 (1972)) or which affects a broad class of procurements

(Singer Company, 56 Comp. Gen. 172 (1976), 76-2 CPD 481). The exception is applied sparingly, Field Maintenance Services Corporation, B-185339, May 28, 1976, 76-1 CPD 350, ABC Cleaning Service, Inc., B-190406, February 27, 1978, 78-1 CPD 158, and does not relate to the amount of money involved, 52 Comp. Gen., supra. We do not think the issues in the present case warrant invoking this exception to our timeliness standards.

Mil-Air also suggests that our Office should investigate why another supplier was "suddenly" added to the approved sources list in 1977. In this regard, the burden is on protesters to present the information and evidence necessary to substantiate their cases, Allen and Vickers, Inc., 54 Comp. Gen. 1100 (1975), 75-1 CPD 399, and accordingly our Office in its protest decision function will not conduct investigations to establish whether a protester's speculative statements are valid. Fire & Technical Equipment Corporation, B-191766, June 6, 1978, 78-1 CPD 415.

The protester also states it was dismayed to learn that the Navy had divulged its protest to another offeror and had sought assistance from that offeror and others in "rebutting" Mil-Air's proposal. In this regard, Armed Services Procurement Regulation § 2-407.8(a)(3) (1976 ed.) provides that bidders affected by a protest shall be given notice of the protest and advised that they may submit their views to the contracting officer. Accordingly, we see no impropriety in the Navy's actions.

Mil-Air also claims its "bid" preparation costs. In this connection, our Office will not consider a claim for bid or proposal preparation costs which is based upon issues raised in a protest which was untimely filed. DWC Leasing Company, B-186481, November 12, 1976, 76-2 CPD 404; Documentation Associates, B-190238, June 15, 1978, 78-1 CPD 437.

The protest and claim are dismissed.

  
Paul G. Dembling  
General Counsel