

DECISION



*J. Cunningham
Proct. I.*

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

7801

FILE: B-192616

DATE: September 25, 1978

MATTER OF: Raycomm Industries Inc.

DIGEST:

1. Experience may be a proper evaluation criterion even though one firm thereby obtains an advantage so long as use of the criterion does not constitute an unfair action.
2. Under facts of record protester must be held to have been on notice of bases of protest concerning alleged defects in negotiation process and comparative merits of proposed prices for contract work no later than July 12 when protest was filed with Navy. Consequently, protester was required to file protest within 10 working days of receipt of Navy's denial of protest.
3. Copy of letter to Navy filed by protester at GAO did not constitute protest to GAO under 4 C.F.R. § 20.1(b) and (c)(4) since it was not addressed to GAO and did not "specifically request a ruling by the Comptroller General" but only requested that Navy request CAO render decision.
4. Since protest was not filed at GAO within 10 working days from July 25, 1978--latest date on which protester was aware of bases of protest--protest is untimely filed.

On August 14, 1978, a protest was received from Raycomm Industries Inc. (Raycomm) asserting a protest against award of Navy contract NOO140-78-C-0993 to RCA Service Company (RCA) because:

(1) No bidder could have competed against RCA in light of RCA's prior direct experience at the procuring activity;

(2) Had the procuring activity invited Raycomm, during pre-award negotiations, to explain its cost and manpower estimates, Raycomm could have shown that its charges on two recent contracts were only 10 percent of Government estimated costs for the contracts--thereby enhancing the attractiveness of Raycomm's present cost proposal;

(3) Raycomm's price for the subject contract was much lower than RCA's price; therefore, award to Raycomm rather than RCA was in the Government's interest.

The initial protest correspondence submitted by Raycomm shows that by mailgram of July 12, 1978, Raycomm filed a protest with the Navy over the award of the subject contract. By letter of July 18, the Navy replied to Raycomm's protest. The Navy's reply stated that RCA had submitted the "best technical proposal" for the contract work and had demonstrated the "most extensive corporate and personnel experience." Moreover, as to cost concerns the Navy stated "any other offeror would almost certainly incur substantially greater costs." Consequently, the Navy denied the company's protest.

By letter of July 25, 1978, to the Navy, Raycomm "requested that [the Navy's denial of the company's protest] be reconsidered and that the General Accounting Office be requested to investigate this procurement and render a decision * * *." Raycomm sent a copy of its July 25 letter to our Office which was received on July 27.

Analysis

Ground of protest (1) essentially complains that by reason of RCA's experience on prior contracts the contractor has improperly achieved a competitive advantage over Raycomm and other concerns. There is no requirement, however, that an agency eliminate the competitive advantage possessed by an offeror in experience, resources or skills by virtue of the offeror's performance of prior contracts unless the competitive advantage enjoyed by a particular firm is the result of a preference or unfair action by the Government. Boston Pneumatics, Inc., B-188275, June 9, 1977, 77-1 CPD 416.

The mere facts that the Navy listed experience as an evaluation criterion for the subject contract and that RCA's past experience entitled it to a superior score under the criterion do not establish unfair action by the Government.

As to grounds of protest (2) and (3), Raycomm must be held to have been on notice of these bases of protest when it filed its July 12 mailgram of protest with the Navy. By that date the company was on notice of alleged defects in the negotiations conducted with it as well as the price of the RCA contract. Consequently, the July 18 Navy letter denying the company's protest constituted initial adverse agency action on these grounds of protest. Thus, Raycomm was obliged to file its protest with our Office within 10 working days from July 25. 4 C.F.R. § 20.2(a) (1978).

The copy of Raycomm's July 25 letter filed here on July 27 did not constitute a protest to our Office since the copy merely contained a statement which requested the Navy to request a GAO decision. The letter was not addressed to GAO and nowhere in the

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July 25 letter was there any indication that Raycomm was directly requesting our Office to decide the protest. Sections 20.1(b) and (c)(4) expressly provide, however, that protests must be addressed to GAO and shall "specifically request a ruling by the Comptroller General." Consequently, the copy of the July 25 letter cannot be considered a protest to GAO.

The only communication addressed to GAO was an August 11 mailgram of protest received on August 14 or more than 10 working days after July 25. Thus Raycomm's grounds of protest (2) and (3) are untimely filed and will not be considered.

Protest denied.



Acting Comptroller General
of the United States