

DECISION



11272 PL-1
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194680

DATE: August 30, 1979

MATTER OF: EDMAC Associates, Inc. DLG 02660

DIGEST:

[Protest Against Extended Closing Date Amendment to Solicitation]

1. Protest against amendment to solicitation which extended closing date for receipt of proposals filed with our Office more than 10 working days after extended closing date is untimely filed and will not be considered on merits.
2. Timely protest filed to protect protester's interests if prior protest was sustained is moot and dismissed since prior protest is untimely filed and not for consideration.
3. Neither procurement regulations nor Bid Protest Procedures preclude contracting officer from requesting best and final offers while protest is pending before GAO.

(EDMAC Associates, Inc. (EDMAC), protests an amendment to extend the closing date under request for proposals (RFP) No. SBSA RFP N00383-79-R-1366 issued by the Navy Aviation Supply Office (Navy) and the Navy's subsequent increase in the quantity of items and solicitation and acceptance of best and final offers prior to resolution of the protest by our Office.)

The RFP, a total small business set-aside for 21 radio test sets, was issued on February 2, 1979, to EDMAC and Radionics Incorporated (Radionics), with a closing date for receipt of proposals of March 5, 1979. The RFP was amended on February 27, 1979, and on March 5, 1979, to extend the closing date to March 19, 1979. Amendment No. 0003, dated March 16, 1979, increased the quantity from 21 to 60 sets and extended the closing date for receipt of proposals to April 4, 1979, at 2 p.m. On that date, at Radionics' request, the Navy decided

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to extend the closing date to April 6, 1979. Radionics was advised of the extension by telephone at 1:30 p.m.; EDMAC's representative was informed of the extension in person at 1:40 p.m., and the Navy confirmed the extension by telegram sent to the firms at 1:55 p.m.

EDMAC initially protested the extension by telegram to the Navy on April 4, 1979, with a copy to our Office, received here on April 9, 1979. EDMAC's protest here was sent by telegram on April 20, 1979, and was received by our Office on April 23, 1979.

On May 8, 1979, the Navy negotiated by telegram with the parties, increasing the quantity from 60 to 73 sets and requesting that best and final offers be submitted by May 17, 1979. By telegram to the Navy of May 15, 1979, EDMAC asked that the request for best and final offers be postponed pending our decision on the protest. EDMAC protested against the quantity change and solicitation of best and final offers by telegram to our Office dated May 16, 1979. On that date, the Navy denied EDMAC's request by telephone and confirming telegram, and timely best and final offers were received from EDMAC and Radionics, as scheduled, on May 17, 1979.

EDMAC essentially contends that extension of the closing date to April 6, 1979, because Radionics' misread the closing date as April 5 and could not submit its proposal to meet the April 4 closing date, was arbitrary and otherwise improper; any proposal received after the April 4 closing date should be rejected as a late proposal. (The protester concludes that award should be made to EDMAC on the basis of its April 4 proposal, that solicitation of best and final offers prior to the resolution of the firm's protest is prejudicial to the firm, and that any quantity change subsequent to the filing of the firm's protest should be negotiated by the Navy with EDMAC.)

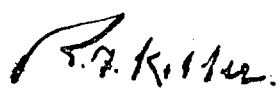
(Although EDMAC's protest against the extension was apparently timely filed with the Navy, any subsequent protest to this Office must be filed within 10 working days of formal notification or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 20.2(a) (1979). The Navy's failure to rescind the amendment and the receipt of proposals, as scheduled, on April 6, 1979, constituted "adverse agency action" prejudicial to EDMAC's protest to the agency, requiring a timely protest to our Office

within 10 working days.) Because we do not consider a copy of a protest addressed to the procuring activity to constitute a protest to our Office, California Computer Products, Inc. -- Reconsideration, B-193611, May 15, 1979, 79-1 CPD 354; Karl Doll GmbH, B-187109, August 30, 1976, 76-2 CPD 205, and EDMAC's protest of the extension was not received by our Office until April 23, 1979, this ground of the protest is untimely and will not be considered on the merits. See RCA Corporation, et al., 57 Comp. Gen. 809, 814 (1978), 78-2 CPD 213; Documentation Associates, B-190238, March 23, 1978, 78-1 CPD 228. In any event, (as a general rule, we have held that where an extension is granted, the effect of which is to enhance competition, there is no basis for any objection by our Office) whose primary concern is undue restriction, rather than increased opportunity for competition, in solicitations. Solar Resources Inc., B-193264, February 9, 1979, 79-1 CPD 95.

We note that (EDMAC's timely subsequent protest with regard to the Navy's May 8 telegram which increased the quantity and requested best and final offers was to protect EDMAC's interests if the above untimely protest was sustained. Since that protest will not be considered, the issues of this protest are moot and not for consideration.

(Finally, as the Navy states, we have held that neither the procurement regulations nor our Bid Protest Procedures precluded the contracting officer from requesting best and final offers while a protest was pending before our Office. General Electric Company, B-186759, November 15, 1976, 76-2 CPD 411. Moreover, the Navy has complied with applicable procurement regulations by withholding award pending our decision on the matter.

The protest is dismissed in part and denied in part.


Deputy Comptroller General
of the United States