

11693

PL-II
Baker



DECISION

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

FILE: B-195673

DATE: October 17, 1979

MATTER OF: Dupont Energy Management Corporation

TLC 03079

DIGEST:

1. Where protester was advised earlier that award would be made to another firm if final negotiations with that firm were successful, protest contesting contract award and failure to hold discussions with protester is untimely because basis of protest was known once evaluation of protester's proposal was explained.
2. Request for conference on merits of protest is denied where protest is dismissed as untimely.

[Protest Alleging That Award]

Dupont Energy Management Corporation (Dupont) protests award of a contract to Honeywell, Inc. (Honeywell) under request for proposals (RFP) CPT 79-1 for energy monitors. The RFP was issued by Brookhaven National Laboratory, a Government-owned facility operated by Associated Universities, Inc. for the Department of Energy. Dupont contends that the award to Honeywell was arbitrary, capricious, and contrary to applicable procurement regulations because Brookhaven: improperly evaluated Dupont's proposal, should have considered the lower cost of its proposal, did not conduct negotiations with Dupont, and failed to make a preaward survey and on-site inspection at Dupont.

CNO
00308

ABC 01466

DLG 01486

AGC 00912

We find the protest to be untimely, as it was not filed within 10 working days after the protester knew its basis of protest. 4 C.F.R. § 20.2(b)(2) (1979).

~~007384~~

Dupont protested to our Office on August 3, 1979, after it learned of the Honeywell award. (By letter dated June 1, 1979, however, Dupont was advised by Brookhaven that "another firm" had been selected for award pending successful negotiation of a contract. Brookhaven again wrote Dupont on June 11, forwarding its Source Selection Board's comments on Dupont's proposal and advising Dupont that it was entitled to a debriefing. Brookhaven believes that upon receipt of the June 11 letter, Dupont had sufficient information upon which it could have protested.)

(Dupont responds that selection of Honeywell was conditioned on successful negotiation of a contract which it believed was not likely. Because Dupont thought that it ultimately might be awarded the contract, it argues that it had no reason to protest until an award was made.) Dupont relies on our decision in Honeywell Information Systems, Inc., B-186313, April 13, 1977, 77-1 CPD 256, upholding a protester's contention that it only became aware of the protest basis when it learned the contents of the successful proposal. Dupont also cites Ikard Manufacturing Company, B-192578, February 5, 1979, 79-1 CPD 80, in which we stated that a late offeror had no basis upon which to protest until it learned of award.) *Ina*

Therefore, by letter ↑
 Dupont essentially contends that negotiations should have been conducted to allow it to explain its proposal. The June 1 letter informed Dupont that Brookhaven intended to make an award to another firm. In a letter to Brookhaven dated June 19, Dupont acknowledged that Honeywell's proposal had been accepted. Thus, Dupont knew then that no pre-selection negotiations or preaward surveys or inspections would be held. *Go back to the position that* Upon receipt of the June 11 letter, Dupont was aware of some of the reasons why its proposal had not been accepted, and it chose not to request a debriefing regarding Brookhaven's evaluation of its proposal. The evaluation comments included with the letter also stated that Dupont had submitted the lowest cost proposal.

We believe the cases Dupont cites can be distinguished from the instant case. In Honeywell we found

that the protester first became aware of the basis for protest after award. In the instant case, Dupont should not have waited for notice of final award to Honeywell before it protested, because Dupont protests Brookhaven's evaluation of Dupont's own proposal. The protest was not based on the contents of the awardee's proposal, which could be learned only after award.

In Ikard, the protester sought to have its late quote considered consistent with prior practice and consistent with the Government's reservation of the right to accept late quotes if to do so would be in its best interests. The protest was considered timely because contemporaneous documentary evidence indicated that Ikard was told only that its quote would be treated as late but not that it would be rejected. Thus, the protester could reasonably refrain from protesting because it might have received award even though it knew the agency considered its quote as late. Unlike the protester in Ikard, however, Dupont knew that Brookhaven planned to accept another firm's proposal.

(In our view, Dupont's failure to protest after receiving Brookhaven's June 11 letter underscores the importance of strict time limits in cases of this type. By that date, Dupont knew which areas of its proposal were considered deficient. If Dupont is correct in its view that these deficiencies could have been overcome had discussions been held, it failed to say so promptly, and acquiesced in Brookhaven's alleged error until award was made.)

(Dupont argues that if its protest is regarded as untimely it should nevertheless be considered "for good cause shown" or as raising a significant issue, as provided in 4 C.F.R. § 20.2(c). Dupont alleges that it reasonably waited to protest until it received notice of award. It adds that Brookhaven's failure to follow proper procurement procedures raises a significant issue. However, the good cause exception to our timeliness rules is limited to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. The significant issue exception is

limited to issues that are of widespread interest to the procurement community and is exercised sparingly so that timeliness standards do not become meaningless. Eglen Hovercraft, Incorporated, B-193050, January 22, 1979, 79-1 CPD 39. The record before us does not warrant allowing either exception.

In view of our decision, Dupont's request for a conference concerning the merits of its protest is denied. AAI Corporation, B-192346, November 3, 1978, 78-2 CPD 320.

The protest is dismissed.



Milton J. Socolar
General Counsel