

12017 *Baskin*
Protest



DECISION

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

FILE: B-195425

DATE: November 14, 1979

MATTER OF: Davey Compressor Company

[Unusually Protest of Air Force Contract Award]

DIGEST:

Where protester filed Freedom of Information Act request because it "had some indication" that all other proposals were nonresponsive to request for technical proposals, but did not protest until long after becoming aware of agency's acceptance of such proposals under step one of two-step procurement and until Freedom of Information Act appeal was denied 3 months after award, protester did not diligently pursue protest and protest is therefore dismissed.

CNE 2416
Davey Compressor Company protests the award of a contract for diesel driven and fired heaters procured by the Department of the Air Force under a two-step formally advertised procedure. *AGC 00035*

In its protest to this Office Davey states that it "had some indication of the possibility that no bidder other than Davey had provided the kinds of responses required" by a provision in Request for Technical Proposals (RFTP) FD 2060-78-34088 which required offers to spell out in detail how specification requirements would be met. In January 1979 Davey sought to ascertain whether this was true by requesting, pursuant to the Freedom of Information Act (FOIA), copies of the technical proposals submitted by others. This effort proved fruitless, leaving Davey unable "otherwise to determine whether the successful technical proposal * * * was in compliance with the material requirements of the RFTP * * *." In July 1979 Davey protested the award to Fiesta Corporation within 10 days after denial

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of its FOIA request by the Secretary of the Air Force, having learned of the award in April 1979. Davey protested "on the basis of its belief, which the Air Force refuses to confirm or deny, that all such technical proposals deviated materially from the RFTP requirements."

The Air Force, in response to our request for a report, contends that the protest was not filed within 10 days after the basis for protest was known as required by our Bid Protest Procedures, 4 C.F.R. 20.2(b)(2) (1979). It argues that the protest is untimely because whatever Davey's basis is for protesting, Davey knew in April of the award to another firm and did not protest here until July.

In response, Davey argues that even though it knew in April of the agency's adverse award action, "it had no knowledge, and could not have known, why the award to Fiesta might be subject to protest." Davey believes that the 10 day filing period did not commence in April because it did not know then the basis of the protest.

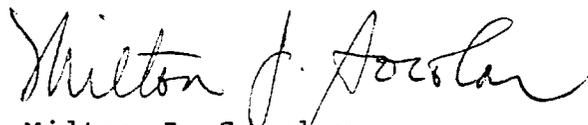
Davey has yet to explain what "indication" it has, or the basis for its belief, that all other proposals deviated materially from the RFTP requirements. Although the record is unclear as to when Davey first became aware that the Air Force considered acceptable step-one technical proposals submitted by others, it is apparent that Davey was aware of this fact no later than April when it learned of the award. Had it protested within 10 days after becoming aware that the agency had approved deviating proposals under step one, or absent such knowledge had it protested within 10 days after becoming aware of the award, this Office might have considered its protest. We are not inclined at this late date to request Davey to articulate the basis for its belief that we should review this matter nor would we review a protester's mere speculation of wrongdoing. Courier-Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323.

Protests are serious matters which relate to rights and interests of the protester, as well as those of

the procuring activity and other interested parties. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly burdening and delaying the procurement process and, at the same time, to permit us to decide the matter while it is practicable to take effective action with respect to the procurement if the circumstances warrant.

It is not uncommon for a firm upon learning of award to a competitor to lodge with this Office whatever protest basis it may have and still pursue a request for information with the procuring agency under FOIA. We require only that a protester articulate its reasons for objecting to adverse agency action even though it may not have the information necessary to judge for itself the responsiveness of an awardee's technical proposal. In an appropriate case, this Office may decide to withhold action on a protest while an FOIA request is pending. However, that decision is for this Office to make and we have consistently required that protests be filed promptly after the basis for protest becomes known. It is clear that Davey has not met this requirement and Davey neither has raised any issue significant to procurement practices or procedures nor has shown good cause for failing to protest timely.

The protest, therefore, is dismissed.



Milton J. Socolar
General Counsel