

DECISION



14852
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Army Contract Award] PL 1

FILE: B-198782

DATE: September 9, 1980

MATTER OF: Martin Marietta Corporation

DIGEST:

Protester learned at benchmark demonstration that it could not complete requirement and next day agency's technical representative notified protester that it failed test and was out of competition. About 1 month later, contracting officer confirmed earlier notice. In circumstances, protest filed with GAO within 10 working days of receipt of contracting officer's letter but more than 10 working days after technical representative's notification is untimely under GAO Bid Protest Procedures.

Martin Marietta Corporation, through its Data Systems Division (MMDS), protests the award of any contract under request for proposals (RFP) No. DABT-19-80-R-0030 issued by the Army for certain tele-processing support.

MMDS essentially contends that on July 17, 1980, at the benchmark demonstration, the Army introduced new input data types (two digit weather and terrain codes instead of the single digit codes, which were previously provided by the Army as representative input data). MMDS states that the two digit codes were not included as representative data in the benchmark package. MMDS also states that the new requirement caused it to fail to complete the benchmark demonstration in a timely manner. On July 18, 1980, the Army benchmark team, through the contracting officer's technical representative (COTR), informed MMDS's technical representative that MMDS was disqualified from the competition for its failure to complete the required validation.

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On August 11, 1980, MMDS received notice from the contracting officer that it was disqualified from the competition and on August 22, 1980, MMDS filed its protest here. MMDS contends that the COTR did not have authority to disqualify it from the competition so, in essence, the initial adverse agency action was the notice of disqualification from the contracting officer, thus making its protest here timely.

Our Bid Protest Procedures provide that, in order to be timely, protests must be filed within 10 working days of the date when the basis of protest was first learned. 4 C.F.R. § 20.2(b)(2) (1980).

MMDS's basis of protest is that the Army allegedly introduced two digit codes in the benchmark demonstration after leading MMDS to believe that only single digit codes would be used, resulting in MMDS's failing to successfully complete the benchmark demonstration and in its disqualification from the competition.

MMDS knew on July 17 that it could not pass the benchmark because it had not prepared for two digit codes. On July 18, the Army COTR notified MMDS that it was out of the competition for technical reasons which seem to be within his purview. There is no evidence that MMDS disputed the COTR's conclusion; in fact, MMDS seems to agree that it failed the benchmark requirement. There is no evidence that the COTR indicated to MMDS that his determination was preliminary, or subject to further study, or undergoing review at higher levels. We believe that the Army's position on July 18, 1980, was that MMDS was out of the competition and, on that date, MMDS should have known it and known why. Thus, we conclude that MMDS's protest here on August 22, 1980, is untimely.

In the circumstances, MMDS's receipt of notification from the contracting officer was merely confirmation of what the COTR advised MMDS almost a month earlier. MMDS was not entitled to wait for "official" notification of its disqualification pursuant to Defense Acquisition Regulation § 3-508.2(a) (1976 ed.) and thereby extend the time for filing the protest here.

See, e.g., SDC Integrated Services, Inc., B-195624,
January 15, 1980,, 80-1 CPD 44; Mr. Ely Keenberg,
B-196552, January 16, 1980, 80-1 CPD 50; International
Power Machines Corporation, B-197697, March 17, 1980,
80-1 CPD 206.

Accordingly, MMDS's protest is dismissed.

Narry R. Dan Cline
for Milton J. Socolar
General Counsel