

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548*Pure***FILE:** B-210423.3**DATE:** May 19, 1983**MATTER OF:** Decision Management Company, Inc.**DIGEST:**

1. Protest against an RFP's evaluation criteria is untimely where it was not filed before proposals were due.
2. Protest contending proposal was improperly determined to be outside of the competitive range is dismissed as untimely because it was filed more than 10 working days after the protester received a debriefing, when the firm knew the reasons for the agency's action.

Decision Management Company, Inc. (DMC) protests the Department of Energy's (DOE) determination that its proposal for project control services submitted in response to request for proposals (RFP) No. DE-RP02-83-CH10128 was outside of the competitive range. DMC also complains about the evaluation scheme established in the RFP, which the firm contends resulted in an unfair competitive advantage for its competitors.

DMC's protest, received in our Office on April 5, 1983, is dismissed as untimely under our Bid Protest Procedures, 4 C.F.R. part 21 (1983).

DMC states that it was informed in December 1982 that its proposal was not within the competitive range because other proposals received ratings that exceeded by significant margins the ratings receiving by DMC's proposal, and that no further discussions with DMC were contemplated. DMC informed DOE on December 20 of its intent to take action necessary to ascertain whether the procurement was proper and fair. On ~~January 21, 1983,~~ DMC filed a request under the Freedom of Information Act

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(FOIA) for copies of all proposals found to be within the competitive range, evaluation notes, and scoring records and rationale, as well as a great deal of other material. DMC was given a full debriefing with respect to the evaluation of its proposal on February 1, 1983 (although DOE advises that no information regarding the other proposals was given because of the on-going competition). By letter of March 4, DOE denied much of the requested material on various grounds, and by letter of March 31, DMC appealed the denial to DOE's Office of Hearings and Appeals.

DMC's protest as it relates to the contents of the RFP is untimely under section 21.2(b)(1) of our Bid Protest Procedures, which requires that protests based upon alleged improprieties in an RFP that are apparent prior to the closing date for receipt of initial proposals be filed before that date. See Armidir, Ltd., B-205890, July 27, 1982, 82-2 CPD 83.

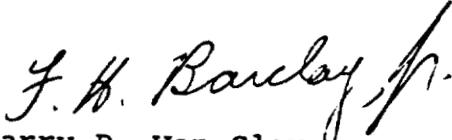
The protest against DOE's exclusion of DMC from the competitive range also is untimely. Section 21.2(b)(2) of our Procedures requires that protests based on grounds other than improprieties apparent from the solicitation be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. CRA, Inc., B-209779, December 9, 1982, 82-2 CPD 519. Thus, once DMC found out at the February 1 debriefing the specific reasons for the rejection of its proposal, it was required to protest within 10 working days of the debriefing. Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423. DMC waited 2 months after its debriefing before it filed its protest with our Office, and the protest therefore is untimely.

Further, the fact that DMC may have been waiting for a response to its FOIA request is irrelevant, since the firm clearly knew at the time of the debriefing DOE's reasons for excluding the proposal from the competitive range. See Advanced Marine Enterprises, Inc., B-196252.2, February 7, 1980, 80-1 CPD 106. In any event, it appears that the April 5 protest was filed more than 10 working days after DMC's receipt of DOE's March 4 denial of much of the requested material.

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With respect to DMC's alleged difficulties in obtaining from DOE all of the information requested, we point out that our Office has no authority under the FOIA to determine when or what information must be disclosed by other agencies. Westec Services, Inc., B-204871, March 19, 1982, 82-1 CPD 257.

The protest is dismissed.

For 
Harry R. Van Cleave
Acting General Counsel