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DECISION



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

FILE: B-217352 **DATE:** March 27, 1985
MATTER OF: Modern Aircraft Service

DIGEST:

Protest filed more than 10 working days after the bases were known to the protester is untimely and not for consideration on the merits. The fact that a protest on another basis was already pending does not excuse failure to timely protest subsequent bases of protest.

Modern Aircraft Service (Modern) protests its rejection from the competitive range under request for proposals (RFP) No. N68520-85-R-9082, issued by the Naval Aviation Logistics Center (Navy), for the performance of maintenance on the Navy's P-3 aircraft.

We dismiss the protest as untimely.

Modern filed its protest on December 11, 1984. Modern argues that the manner in which the procurement was conducted during May and June 1984, and the Navy's denial of its request for an extension of the closing date for receipt of proposals (in June 1984) were "unethical, and did not conform to normal government business procedures." In that letter, Modern also protested its rejection from the competitive range. The latter basis of protest is based on a letter dated November 21, 1984, received by Modern on November 24, 1984, notifying Modern that it was rejected from the competitive range "because of the disparity in prices quoted." Modern contacted the Navy on November 24, 1984, to discuss the reasons why it was rejected and was told that the language of the November 24 letter was inaccurate, and that it would be called on November 25, 1984, to have the reasons explained more fully. Modern states that it was not called on November 25, 1984. As a remedy, Modern requested that GAO advise the Navy to conduct a preaward survey of Modern, and if the Navy finds Modern to be nonresponsible to refer the matter to the Small Business Administration for possible issuance of a Certificate of Competency, since Modern is a small business.

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The Navy provided Modern the detailed reasons for its rejection from the competitive range in a letter received by Modern on December 17, 1984, and a debriefing of the same date. Essentially, the Navy found that Modern's proposal was technically unacceptable. With its comments on the agency report, filed with GAO on March 4, 1984, Modern raised new protest issues based on a December 17, 1984, debriefing and letter received on that date.

Our Bid Protest Procedures require that protests be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1984); ECOS Management Criteria, Inc., B-214574, Mar. 27, 1984, 84-1 C.P.D. ¶ 361. The allegations raised by Modern in its protest, filed December 11, regarding the manner in which the procurement was conducted in May and June 1984 are clearly untimely. ECOS Management Criteria, Inc., B-214574, supra.

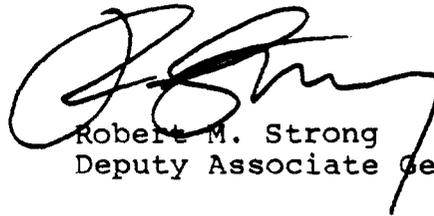
Modern's protest letter received December 11, 1984, also protested that Modern was rejected from the competitive range because of the "disparity in pricing." This protest stemmed from the letter Modern received on November 24. Although Modern was told by the agency by telephone on November 24, that it could ignore the reason in the letter as to why it was rejected from the competitive range, after Modern was not called back by the agency by the expected date, Modern protested to GAO. After Modern protested to GAO, however, it learned of the approximately 15 detailed reasons why it was rejected from the competitive range, and why its proposal was considered to be technically unacceptable.

Although Modern's letter filed on December 11 may have been timely filed relative to what Modern believed was the reason for its rejection, that is, "because of disparity in prices quoted," it does not state the actual reasons why Modern was not considered by the Navy to be in the competitive range. Modern learned the actual reasons for its rejection in mid-December and, therefore, it was incumbent upon it to protest against those reasons within 10 working days. See Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 C.P.D. ¶ 661. Merely because Modern had a protest pending with GAO did not excuse Modern from detailing its actual bases of protest in a timely fashion after it learned of them in mid-December. Radix II, Inc., B-186999, supra. Therefore, Modern's detailed protest filed on March 4, 1984, with its comments to the agency report,

more than 2 months after Modern learned of the bases, is untimely and will not be considered on the merits. Radix II, Inc., B-186999, supra.

We note that, while the technical evaluation criteria do contain matters that traditionally bear on responsibility, in negotiated procurements it is permissible to use traditional responsibility factors to judge the technical merits of competing proposals. Anderson Engineering and Testing Company, B-208632, Jan. 31, 1983, 83-1 C.P.D. ¶ 99. In such circumstances, the contracting agency may find a small business proposal to be technically unacceptable without referring the matter to the SBA. Numax Electronics Incorporated, B-210266, May 3, 1983, 83-1 C.P.D. ¶ 470.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel