**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wedtech Corp.

File: B-222517.2

Date: September 3, 1986

DIGEST

Protest that agency did not properly request best and final offers is dismissed as untimely since it was filed more than 10 working days after basis for it was known to the protester.

DECISION   •

Wedtech Corp. protests that the Department of the Army did not properly conduct negotiations or ask for best and final offers under request for proposals (RFP) No. DAAA09-85-R-1126, for 66,000 units of the M13 Decontaminating Apparatus and spare parts. We dismiss the protest as untimely.

Initial offers in response to the RFP, issued September 4, . 1985, were due on December 12. By letter of February 5, : 1986, offerors, including Wedtech, were advised that negotiations were opened to incorporate changes to certain technical data; that negotiations would close on March 5 at 4 p.m.; and that any revisions to offers had to be received before that time. The letter also stated that the government reserved the right to reopen negotiations, and that after the closing date no information other than a notice of unacceptability would be given to any offeror until after award.

Wedtech submitted a timely revised offer. The firm telephoned the contracting activity on March 10, however, to determine the precise intent of the Army's February 5 letter as it applied to negotiations and best and final offers. The firm was advised that the letter constituted both negotiations and a request for best and final offers incorporating the listed changes.

By letter of the next day, the Army advised Wedtech that the firm's offer might be in error, and the reasons why. Wedtech, in two letters of March 25, confirmed its prices,
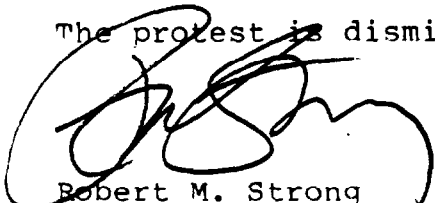
but also offered to reduce them to specified amounts, having "discovered areas where greater efficiencies can be achieved." In a June 12 telephone conversation, [1] the Army advised Wedtech that the firm's March 25 price revisions were being handled as a late modification since they were received after best and final offers were due, so that the revisions could be considered only if Wedtech otherwise was in line for award.

Wedtech protests that the Army did not conduct negotiations other than through the February 5 letter, and that the letter did not clearly call for a best and final offer. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), require that a protest like Wedtech's be filed within 10 working days after the basis for it was or should have been known, whichever is earlier. Wedtech should have known upon receipt of the Army's February 5 letter that further discussions might not be conducted and that firms might not have another chance to revise their offers. Certainly, the fact that there would be no further negotiations or revision opportunities was made clear to Wedtech when it telephoned the contracting activity on March 10 and, if any doubt still remained on Wedtech's part, through the advice given on June 12. The protest, filed in our Office on July 11 (by letter of July 7), therefore was not filed within the required 10-day period, and is untimely.

In any event, we note that an agency properly can conduct negotiations through a best and final offer request where, as appears to have been the case here, a proposal contains no technical uncertainties. See Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 C.P.D. ¶ 76. Also, the Army's advice to Wedtech that the firm's attempted March 25 price revisions could be considered only if Wedtech otherwise was the successful offeror was consistent with the regulation that governs late offers, which was incorporated into the RFP by reference. See Federal Acquisition Regulation, 48 C.F.R. § 52.215-10(f) (1984).

The protest is dismissed.

Robert M. Strong
Deputy Associate
General Counsel

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[1] The procurement was delayed by a protest to our Office involving the solicitation, which was submitted by another company on an unrelated matter.