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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electron Beam Development Corp.
File: B-224368
Date: October 2, 1986

DIGEST

Protest against Air Force's denial of protester's application for qualified concern status under solicitation is untimely where protester filed protest at GAO more than 10 working days after Air Force took initial adverse agency action on protester's similar, preclosing date protest by proceeding with RFP's closing date without reversing Air Force position that protester was not a source eligible to compete for award of contract. See 4 C.F.R. § 21.2(a)(3) (1986).

DECISION

Electron Beam Development Corp. has protested the exclusion of its proposal under request for proposals (RFP) No. F34601-86-R-0074, which was for inspection and repair of fan blades for the TF 30 jet engine. The RFP's clause M-48 restricted award of the contract to offerors which had previously been approved for repair or to other offerors which submitted, prior to or with their proposals, evidence showing that they should be allowed to compete for the contract. The RFP listed several companies as approved sources, several of which submitted proposals, as did Electron Beam, which is not an approved source at the present.

Electron Beam primarily argues that it should be considered for award of the contract because the Air Force allegedly erred in March 1986 in determining that the company should not be considered to be eligible to participate in the competition. We dismiss the protest as being untimely filed because the protester did not protest the Air Force's initial adverse agency action on its similar, earlier-filed protest with the Air Force within 10 working days of the Air Force's adverse action. See 4 C.F.R. § 21.2(a)(3) (1986).

The RFP was issued on December 30, 1985, and provided for an initial closing date of January 30, 1986. However, because

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of revisions to the RFP, the closing date was extended several times, including once to March 12 and ultimately to April 14. On January 28, Electron Beam sought approval as a qualified source by submitting a data package but approval was denied by Air Force letter of March 6 addressed to Electron Beam. The Air Force's March 6 letter to Electron Beam stated that the company was not approved as a qualified source under this RFP because the company allegedly did not have certain "in-house" capabilities in the areas of "hard face coating," "fan blade shroud weld repair," and "blue etch anodizing."

On March 11, with knowledge that the Air Force had not approved it as a qualified source, Electron Beam nonetheless submitted a proposal and indicated in a cover letter that it protested an award to any firm offering a higher price. As we indicated above, the closing date of March 12 was subsequently extended to April 14. Although it is not clear from the record, Electron Beam's offer apparently was not opened, as a result of which the Air Force contracting officer did not see the Electron Beam protest at that time. On March 17, Electron Beam submitted additional data to the Air Force attempting to "refute" the Air Force letter of March 6, which gave the reasons for not qualifying Electron Beam as a source. On April 11, Electron Beam submitted a revised proposal in which it reiterated its protest of March 11. The Air Force proceeded with the closing date of April 14.

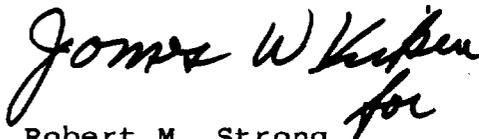
On June 20, Electron Beam filed a protest with our Office, alleging that the Air Force improperly refused to consider a revised offer it apparently submitted on June 9. The record indicates that the Air Force, although not considering Electron Beam for award under this RFP, is considering the data submitted to determine the qualification of Electron Beam for future solicitations.

Although Electron Beam admits that it filed a general protest with the agency on March 11, since the proposals were sealed until after the closing date, it is not clear that the agency knew of this March 11 protest until after the April 14 closing date. In any event, the protest stated no more than that Electron Beam would object to award to any other firm at a higher price, and did not discuss the specific reasons which the Air Force had given for not approving the company as a qualified source. Electron Beam's letter of March 17 to the Air Force, however, did constitute an agency-level protest. A letter does not have to state explicitly that it

is intended as a protest for it to be so considered. At a minimum, the intent to protest must be conveyed by an expression of dissatisfaction and a request for corrective action. IBI Security Service, Inc., B-219713, Aug. 27, 1985, 85-2 C.P.D. ¶ 235. While in its March 17 letter, Electron Beam does not specifically state that it is filing a "protest," it clearly states its dissatisfaction with the agency's refusal to consider the firm an approved source, submits information to refute the Air Force's rationale for its decision, and requests corrective action and reevaluation of the Air Forces's decision.

Despite the filing of Electron Beam's protest with it, the Air Force proceeded with receipt of proposals on April 14. Electron Beam did not protest to our Office, however, until June 20, and did not specifically protest the Air Force's April 14 initial adverse action on its March 17 protest until August 7--the date on which Electron Beam filed its comments on the Air Force's report on its protest to our Office. This date, as well as the date of Electron Beam's initial protest to our Office (June 20), was much more than 10 working days past the date of the Air Force's initial adverse action on the protest; consequently, the protest is untimely filed with our Office and will not be considered. See 4 C.F.R. § 21.2(a)(3).

The protest is dismissed.

The signature is written in cursive and appears to read "James W. Keppen" with "for" written below it.

Robert M. Strong
Deputy Associate General Counsel