



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ballantine Laboratories, Inc.--Request for
Reconsideration

File: B-224735.2

Date: October 9, 1986

DIGEST

1. General Accounting Office affirms its prior dismissal of a protest for failure to set forth a detailed statement of the factual and legal grounds therefor where bare assertion in telex that protester's product had been "improperly evaluated" against salient characteristics in solicitation was not sufficient to convey numerous and specific objections largely of a technical nature subsequently explained in an extensive supplement to the protest.

2. Where protest is initially submitted without a detailed statement of the legal and factual grounds of protest, but is subsequently followed by a letter that includes the requisite detailed explanation, timeliness of the protest must be measured from the date of receipt of the detailed statement.

DECISION

Ballantine Laboratories, Inc., requests that we reconsider our September 22, 1986, dismissal of its protest under request for proposals (RFP) No. N00421-86-R-0229, issued by the Naval Air Station, Patuxent River, Maryland.

We affirm our dismissal of Ballantine's protest.

Ballantine's initial protest was filed with our Office on September 22 by telex whose text read in its entirety:

"Ballantine hereby protests the award to Tektronix for eight (8) each oscilloscope calibrators.

"Ballantine Laboratories was the low bidder and was eliminated by improper evaluation of our product against the salient characteristics of the solicitation.

"A detailed letter will be forwarded within 10 days."

We dismissed Ballantine's protest for failure to set forth a detailed statement of its legal and factual grounds for protest, as required by our Bid Protest Regulations. See 4 C.F.R. §§ 21.1(c)(4) and 21.1(f) (1986).

In its request for reconsideration, which we received on October 2, Ballantine takes exception to our dismissal on the basis that Ballantine had indicated in its telex its "intention" to later file a detailed statement and because its telex did in fact state a basis for protest, i.e., "our instrument was improperly evaluated against the salient characteristics of the solicitation." Attached to the request for reconsideration is Ballantine's "detailed statement," dated September 29.

Ballantine's detailed statement consists of a 5-page, single-spaced letter; Patuxent's written procedures for the test and evaluation of the type of equipment procured here; the results of the tests the Navy performed on a sample Ballantine calibrator; the RFP specifications and "Evaluation Factors for Award" provisions; and a 2-volume instruction manual for the protester's equipment.

Ballantine states that it tested its sample calibrator both before submitting it to the Navy and after its return, and on both occasions the sample was within specification. In its detailed statement, Ballantine then separately addresses each of the 10 specification requirements which, according to the Navy, the sample failed to meet. Ballantine variously ascribes its equipment's failure to pass the Navy's tests to the Navy's use of test procedures which did not comply with those in the Ballantine instruction manuals; to the Navy's improper statement of calibration tolerances; to the Navy's failure to fully consider test equipment tolerances; and to "procedural failures and inadequate test equipment" which it describes with specificity. In some instances where the Navy simply used a "P" (Pass) or "F" (Fail) evaluation, the protester asserted that it could not discern the reason for the Navy's "F" entry since the equipment, when tested by Ballantine, was within specification.

The protester also argued that the Navy's evaluation was improper in that the Navy did not advise Ballantine of the failures which occurred and permit Ballantine to remedy them

prior to rejection of the firm's proposal, an opportunity which the firm says should have been afforded it under the "Evaluation Factors for Award" provisions of the RFP.

The protester has advised us that it was notified on September 10 of the award to Tektronix and that its bid sample had failed the technical evaluation. It, therefore, would have until the close of business, September 24, to file its protest of that award. See 4 C.F.R. § 21.2(b)(2). Ballantine's telex, received by us on September 22, met this timeliness requirement. It did not, however, constitute a protest because it did not "set forth a detailed statement of the legal and factual grounds of protest, including copies of relevant documents," as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(b)(4), and was dismissed on that basis, 4 C.F.R. § 21.2(f). Ballantine's detailed statement was not received by us until October 2, 8-work days or 10-calendar days after Ballantine filed its initial protest.

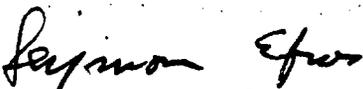
Our Bid Protest Regulations implement the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (Supp. III 1985). The strict initial filing requirements which resulted in the dismissal of Ballantine's protest are necessitated by CICA provisions that require this Office to notify a contracting agency of a protest within 1 day after its filing and further require that the agency generally furnish this Office with a report responding to the protest within 25 working days after such notice. 31 U.S.C. § 3553(b). Permitting the subsequent filing of an additional detailed statement in support of a protest would hamper contracting agencies' ability to comply with the statutorily imposed time limitation for filing a report, in that it would deprive them of a portion of the allotted 25-day period for preparing a response. Neither the statute nor our regulations contemplate, as Ballantine appears to believe, that a protest may be initiated by a brief notice to be followed by a detailed statement within 10 days.

We recognize that in its telex Ballantine did state that its product had been "improperly evaluated" against the salient characteristics of the RFP. The telex did not disclose, however, in what respects the evaluation was improper. The firm's detailed statement shows that, in fact, its objections to the evaluation are numerous, quite specific and technical in nature. In addition, the protester claims that the Navy violated the "Evaluation Factors for Award" clause by not giving Ballantine an opportunity to remedy test failures as

they occurred. We do not think that this ground for protest would be apparent from the general statement that the protester's product had been "improperly evaluated."

The extensiveness of Ballantine's detailed statement so contrasts with its initial assertion that its product had been "improperly evaluated" that we are not persuaded that the telex provided the Navy with sufficient information to take comprehensive corrective action or otherwise fully respond to the protest. See Dynalectron Corporation-- Request for Reconsideration, B-219664.3, May 13, 1986, 86-1 C.P.D. ¶ 452. We therefore affirm our prior dismissal of Ballantine's initial protest.

Ballantine did not file what properly could be considered a protest under our regulations until October 2, when we received its detailed statement of its protest grounds. Since October 2 is well beyond 10 working days after Ballantine was notified of the award to Tektronix, the October 2 protest is untimely. See A&M Instrument, Inc.-- Request for Reconsideration, B-220167.2, Sept. 30, 1985, 85-1 C.P.D. ¶ 359.

for 
Harry R. Van Cleve
General Counsel