

Support



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Aero Products Research Inc.  
File: B-226762.2  
Date: August 4, 1987

### DIGEST

1. Agency refusal to waive first article test requirement was reasonable where specification change was adopted due to unsatisfactory quality and no items produced under that specification had been delivered at time of procurement.
2. Proposal modification cannot be considered where received after the closing date for receipt of proposals.
3. Award without discussions is unobjectionable where there is adequate price competition and agency determines award will result in lowest overall cost to government.

### DECISION

Aero Products Research Inc. protests the award of a contract to San Tech, Inc., under request for proposals (RFP) No. F34601-87-R-54795, issued December 24, 1986, by the Department of the Air Force for a quantity of air navigation computers. Aero contends that it submitted the low acceptable offer and that the agency erred in (1) not considering its alternate proposal based upon waiver of the first article test requirement; (2) not accepting a late modification of its proposal with a reduced price; and (3) not conducting discussions.

We deny the protest.

The closing date for receipt of offers was January 21, 1987. The RFP contained the First Article Approval-Government testing clause, Federal Acquisition Regulation, 48 C.F.R. § 52.209-4 (1985). The RFP did not contemplate offers based upon waiver of the first article requirement because of a 1985 specification change necessitated by unsatisfactory quality of the same items under a previous procurement. The RFP also advised offerors that award might be made without discussions. Four offers were received, including one from

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Aero that also contained an alternate proposal at a lower price based on waiver of first article testing. The Air Force did not consider this alternate proposal, leaving San Tech the low offeror. The contracting officer received a modification of Aero's proposal (lowering Aero's proposed price) on February 3 that he opened for identification purposes and rejected as late. On March 4, the Air Force sent all offerors notice that San Tech was the apparent successful offeror. The Air Force made award to San Tech without discussions on March 16, and synopsisized the award in the March 31 Commerce Business Daily (CBD).

The Air Force argues that this protest is untimely because April 17, the day we received Aero's protest grounds, is more than 10 working days after Aero knew those grounds; our Regulations require that protests be filed no later than 10 working days after the protest grounds were, or should have been, known. 4 C.F.R. § 21.2(a) (1987). We disagree.

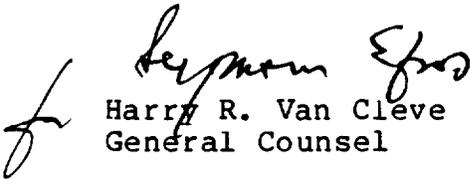
While the March 4 notification of the award to San Tech contained information establishing Aero's protest grounds, Aero indicates it did not receive this notice and that it was unaware of the award until seeing the CBD notice. Similarly, while the protest would be untimely based on the March 31 date of the CBD synopsis, we generally allow a reasonable time for receipt of the CBD by mail. See Delphi Industries, Inc., 58 Comp. Gen. 248 (1979), 79-1 CPD ¶ 67. When such delivery time is taken into account, the protest is not untimely. We find, however, that it is without merit.

First, the decision whether to waive first article testing is essentially an administrative one that we will not disturb unless it is clearly arbitrary or capricious. Aero Tube and Connector Co., B-216280, Dec. 11, 1984, 84-2 CPD ¶ 650. This has not been shown to be the case here. Although Aero claims waiver is warranted because it was in production of quantities of the same item at the time of its offer, the Air Force notes that no items produced after the specification change had been delivered at the time of this procurement; therefore, the government could not be sure that Aero or any other supplier would be successful without first article testing. Under these circumstances, the Air Force reasonably determined that the first article test could not be waived for Aero.

Second, since Aero's modification was received after the closing date; was not in response to a request for best and final offers; and was not a late modification of an otherwise successful proposal, it could not be considered. See FAR, 48 C.F.R. § 52.215-10(f).

Finally, the protester's contention that award without discussions was improper is without merit. Under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(ii) (Supp. III 1985), a contracting agency may make an award on the basis of initial proposals where the solicitation advises offerors of that possibility, and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. Consolidated Bell, Inc., B-220425, Mar. 11, 1986, 86-1 CPD ¶ 238. Here, the RFP stated that award may be made without discussions; the agency received four proposals and determined that an award to San Tech would result in the lowest overall cost; and there was no apparent reason to believe that discussions would result in lower prices on proposals offering to meet all solicitation requirements. Therefore, an award to San Tech without discussions was unobjectionable.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel