



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Mid-America Engineering and Manufacturing  
Company  
File: B-231694  
Date: August 25, 1988

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### DIGEST

Protest filed more than 10 days after the protester was orally informed of the basis of protest is untimely; protester may not delay filing its protest until it has received, in writing, a citation to the specific provision of the Federal Acquisition Regulation on which agency relies for taking its action.

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### DECISION

Mid-America Engineering and Manufacturing Company protests the proposed award of a contract under invitation for bids (IFB) No. DAAE07-87-B-A887 issued by the U.S. Army Tank Automotive Command (TACOM) for 250 control assemblies. Mid-America contends that award to the second low bidder is inappropriate because all bids had expired.

We dismiss the protest as untimely.

Bids were opened on this small business set-aside solicitation on December 17, 1987, and Mid-America was the low bidder. Due to an administrative oversight all bids were allowed to expire on February 15, 1988, and Mid-America was not asked to extend its bid until April 15. Allegedly unable to perform at its original bid price, by letter of the same date, Mid-America refused to extend its bid, contending that it was not "within the contemplation of the procurement regulations or the legal principles involved" to request extensions of bids after they had expired. Mid-America concluded that the IFB should be readvertised and promised to "follow it through a protest should an award be made."

On May 10, 1988, TACOM again requested Mid-America to extend its bid and informed it that the decision whether to

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readvertise or make award was still under evaluation. Mid-America did not extend its bid. On May 17, 1988, Mid-America was orally informed by TACOM that award would be made pursuant to a provision of the Federal Acquisition Regulation (FAR) which allowed extensions of bids after expiration of the acceptance period. According to Mid-America, the citation to the FAR provision (§ 14.404-1(d) (FAC 84-5)) was not disclosed at that time and it requested that TACOM send a letter identifying the provision. According to TACOM, however, the provision was identified both during the May 17 telephone conversation and again in a May 25 letter. Mid-America received the letter on May 27 and then consulted its copy of the FAR. When it concluded that TACOM's reliance on FAR § 14.404-1(d) was misplaced, it filed a protest with our Office on June 10, 1988.

Our Bid Protest Regulations provide that protests shall be filed not later than 10 days after the basis of protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). We note that oral notification of the basis for a protest starts the 10-day period running and a protester may not delay filing its protest until receipt of written notification of the protest basis which merely reiterates the basis of the protest originally orally learned. Aztek, B-229788, Dec. 30, 1987, 87-2 CPD ¶ 648. This is such a case.

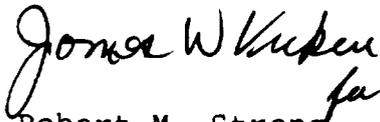
Shortly after this protest was filed, TACOM requested that we dismiss it. We did not think that action was warranted based on the facts then available to us and requested a fuller report. The protester has commented on both Army submissions. Based on our review of all the facts and circumstances, we conclude the protest is untimely and therefore dismiss it.

In comments to TACOM's request for dismissal, Mid-America claimed that the May 25 letter "provided it with reason to know that [TACOM] might proceed to make an award." On the contrary, we note that Mid-America was aware on May 17 that TACOM intended to award a contract under the IFB. Having already asserted that it believed resolicitation was the only legal course of action, and that it would protest if there was an award, Mid-America was then aware of its basis for protest and could not wait for written confirmation. Aztek, B-229788, supra. Its protest of June 10, more than 10 days later, is therefore untimely.

In its comments to the agency report, however, Mid-America contends that it was not aware of its protest basis until it received the May 25 letter, when it learned of the specific FAR provision on which TACOM relied and had the opportunity

to judge whether that reliance was justified. Even if we accept Mid-America's version of the May 17 telephone conversation (i.e., that it was unaware of the specific FAR provision on which TACOM relied until May 27) there is no reason to change our conclusion. TACOM's expression on May 17 of its intention of awarding the contract, notwithstanding Mid-America's continued refusal to revive its bid and the firm's stated belief that only resolicitation was proper, was sufficient to form the basis of a protest and require Mid-America to file its protest of TACOM's proposed course of action within 10 days. Knowledge of the precise legal basis on which an agency relies when taking a procurement action is not necessary to file a protest and a protester may not delay filing until it learns of that basis. Moreover, since it was of the general opinion as early as April that an award by TACOM would violate procurement regulations, Mid-America had ample opportunity, prior to and after May 17, to research its copy of the FAR and reach its own conclusion as to whether the regulation allowed such an award.

Accordingly, the protest is dismissed.

A handwritten signature in cursive script, appearing to read "Robert M. Strong".

Robert M. Strong  
Deputy Associate  
General Counsel