



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Honeywell, Inc.
File: B-231365.2
Date: December 2, 1988

DIGEST

1. Protest against termination of contract for convenience of the government is untimely where protest that award of terminated contract was proper was filed more than 3 months after procuring agency had reopened competition under the request for proposals.

2. Protest against disclosure of protester's contract price pursuant to Federal Acquisition Regulation notice requirements is untimely where protester knew or should have known about contract price disclosure and participated in competition without protest.

DECISION

Honeywell, Inc., protests the action of the Department of the Navy in terminating for the convenience of the government a contract awarded to Honeywell under request for proposals (RFP) No. N00421-88-R-0104, and the subsequent award of a contract to Racal Recorder, Incorporated.

We dismiss the protest as untimely.

The RFP was initially issued January 8, 1988, on a brand name or equal basis for two wideband magnetic tape recorders/reproducers, Racal Recorder model SH 2807 or equal. Only Honeywell and Racal submitted offers. The Navy, on April 28, awarded a contract to Honeywell as the low offeror. On May 9, Racal protested this award to our Office, and the Navy suspended contract performance by Honeywell.

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The Navy determined that award to Honeywell was improper because its "equal" product did not meet all of the RFP salient characteristics, but that the Honeywell product would meet the Navy's minimum needs. The Navy proposed to amend the RFP and reopen the competition, and Racal withdrew its protest.

On June 24, the Navy amended the RFP, reopened the competition, and on July 29 received revised proposals from Racal and Honeywell. The Navy found both proposals technically acceptable. On September 15, the Navy awarded the contract to Racal as the low offeror and terminated Honeywell's contract for the convenience of the government.

On September 23, Honeywell protested to our Office that termination of its contract was improper because the initial award to Honeywell was proper, and that termination was not in the best interests of the government. Honeywell also argues that it was prejudiced by the disclosure of its contract price to Racal after the initial award to Honeywell.

Generally, our Office will not review an agency's decision to terminate a contract for the convenience of the government since that is a matter of contract administration for consideration by a contract appeals board or by a court of competent jurisdiction. Special Waste, Inc., B-230103, June 2, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 520. However, where the decision to terminate results from the agency's finding that the initial contract award was improper, we will review the protest to examine the award procedures that underlie the termination action. The scope of our review is limited to determining whether the initial award was improper and, if so, whether the corrective action is sufficient to protect the integrity of the competitive procurement system. Laclede Chain Mfg. Co., B-221880.2, May 5, 1986, 86-1 CPD ¶ 432.

In this case, however, Honeywell's protest against the termination of its contract is untimely. Our Bid Protest Regulations require protests to 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). While Honeywell argues that its protest is timely because the basis of its protest is the termination of its contract, we do not agree. The basis of Honeywell's protest is its argument that the Navy's initial award to it was proper. As noted above, we will not review an agency decision to terminate a contract other than to examine the underlying procurement action which precipitated the termination. Special Waste, Inc., B-230103, supra. Honeywell knew or

should have known that the Navy by reopening the competition had determined that the initial award to Honeywell was improper. Instead of protesting this adverse agency action, Honeywell participated in the competition. Honeywell will not now be heard to complain, 3 months later and after it lost the competition, that the initial award was proper.

Honeywell also contends that the termination of its contract was improper because it was not in the best interests of the government. However, since we have found that Honeywell's protest against the Navy's determination that the award to Honeywell was improper is untimely, we will not consider the propriety of the procurement action underlying the termination decision and, therefore, we have no basis to review the agency's choice of corrective action. Laclede Chain Mfg. Co., B-221880.2, supra.

Honeywell also argues that the agency disclosed its contract price to Racal and did not disclose Racal's initial proposal price to the protester. The Federal Acquisition Regulation (FAR) provides for the notification of unsuccessful offerors, including such price disclosure. FAR § 15.1001 (FAC 84-13). Pursuant to this notice, the Navy notified Racal of the award to Honeywell. Honeywell should have known that this standard award notice would inform unsuccessful offerors of the awardee's contract price. Since Honeywell participated in the new competition without either requesting this information or protesting to our Office, its protest on this ground more than 3 months later is untimely. 4 C.F.R. § 21.2(a)(2).

Finally, Honeywell argues that even if its protest is untimely we should consider it because of the significance of the issues. We will consider an untimely protest under the "significant issue" exception to our timeliness requirements where the protest raises an issue of first impression that would have widespread significance to the procurement community. 4 C.F.R. § 21.2(b); CardioMetrix--Reconsideration, B-231361.2, June 7, 1988, 88-1 CPD ¶ 541.

The issues raised by Honeywell are not significant under this standard because they have been considered previously. See Special Waste, Inc., B-230103, supra; Federal Auction Service Corp., et al., B-229917.4 et al., June 10, 1988, 88-1 CPD ¶ 553, aff'd on reconsideration, B-229917.8, June 22, 1988, 88-1 CPD ¶ 597.

The protest is dismissed.

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