



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Christoph's Research and Design Systems, Inc.
File: B-232966
Date: December 12, 1988

DIGEST

1. Protest filed 14 months after protester was advised of the rejection of its proposal including the reasons for the rejection is untimely.
2. Protest that solicitation improperly prevented firm from competing is untimely when not filed before the closing date for receipt of initial proposals.

DECISION

Christoph's Research and Design Systems, Inc. (CRDS), protests the award of contracts under the Advanced Launch System (ALS) Phase I Program Research and Development Announcement (PRDA) No. 0006 and under request for proposals (RFP) No. F04701-88-R-0006 (Phase II), issued by the Space Division, Air Force Systems Command. CRDS protests the rejection of its proposal under the PRDA No. 0006 and the alleged denial of an opportunity to submit a proposal under the RFP. We dismiss the protest as untimely.

The ALS Phase I PRDA No. 0006 was published in the Commerce Business Daily (CBD) on April 30, 1987, for an ALS design study. CRDS, along with nine other offerors, submitted a proposal by June 15, 1987, the closing date for receipt of proposals. After evaluation of proposals, seven contracts were awarded on July 10, 1987. CRDS' proposal was rejected for failure to meet evaluation criteria specified in the PRDA. By letter dated July 10, 1987, CRDS was notified of the rejection of its proposal and the awards. Also, the contract awards for ALS Phase I were published in the CBD on July 20, 1987. The contracts for Phase I were completed by August 30, 1988.

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On March 30, 1988, the Air Force announced in the CBD the issuance of RFP No. F04701-88-R-0006 (Phase II) "under full and open competition." Several proposals have been received and evaluated. CRDS did not submit a proposal. Award is pending. CRDS protested to our Office on September 30, 1988.

To the extent CRDS is protesting the rejection of its proposal under Phase I, its protest is untimely. Our Bid Protest Regulations require that bid protests be filed within 10 working 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). Here, the record shows that, by letter dated July 10, 1987, the Air Force advised CRDS of the Phase I awards, the rejection of its proposal and the reasons for the rejection of its proposal. Thus, CRDS was specifically advised of its basis of protest by the Air Force letter. We conclude that CRDS' protest of September 30, 1988, concerning rejection of its proposal under Phase I, filed more than 14 months after CRDS knew the basis of its protest, is untimely.

CRDS' allegation that it was denied an opportunity to compete under Phase II is also untimely. The March 30, 1988 synopsis stated that the solicitation would be issued approximately April 15, 1988, with a closing date not later than May 31, 1988. Publication in the CBD constitutes constructive notice of the procurement action publicized, Marine Instrument Co., B-222846.2, Nov. 9, 1987, 87-2 CPD ¶ 468, and under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), to be timely, protests of alleged improprieties apparent in a solicitation must be filed prior to the closing date for receipt of initial proposals. Therefore, although the CBD notice did not indicate that the Phase II effort was in any way restricted and in fact the agency reports that the solicitation was issued on an unrestricted basis consistent with the synopsis, to the extent CRDS believed otherwise, it should have protested prior to the announced closing date of May 31. CRDS did nothing until it filed its protest with our Office on September 30, 1988, 6 months after publication of the synopsis, and 4 months after the closing date.

CRDS requests that if we find its protest untimely, we consider it pursuant to the exception in our timeliness rules for a protest that raises a significant issue. See 4 C.F.R. § 21.2(b). This exception is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest to the procurement community or involves a matter that has not

been considered on the merits in prior decision. Delaware Eastwind, Inc., B-228533, Nov. 18, 1987, 87-2 CPD ¶ 494. CRDS' protest does not fall within this exception.

We dismiss the protest.

Ronald Berger

Ronald Berger
Associate General Counsel