



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: East West Research, Inc.
File: B-236515
Date: November 30, 1989

DIGEST

Protest against alleged improper technical evaluation under small purchase procurement is dismissed as untimely for lack of diligent pursuit where the protester waited approximately 5 months to receive the contracting agency's final response to its agency-level protest before filing its protest at the General Accounting Office.

DECISION

East West Research, Inc., protests the technical evaluation of the alternate product which it offered under request for quotations (RFQ) No. DLA400-89-T-4164, a small purchase procurement, issued by the Defense Logistics Agency (DLA), for industrial goggles.

We dismiss the protest as untimely.

The RFQ, issued on November 15, 1988, solicited 1,880 industrial goggles, National Stock Number (NSN) 4240-01-103-8473, Jones and Company, FSCM 56543, part No. 34862. On the December 6, 1988 closing date for the receipt of quotations, East West submitted the lowest quote of the five quotes received, offering an alternate item, Sellstrom part No. 79008. On January 6, 1989, after evaluating East West's alternate part, DLA determined that it did not conform to the form, fit and functional characteristics of the specified part and, in particular, did not provide the required seal around the eyes to prevent fluids from entering the eyes. By letter dated February 8, 1989, DLA advised East West that the part which it quoted did not conform to the solicitation requirements.

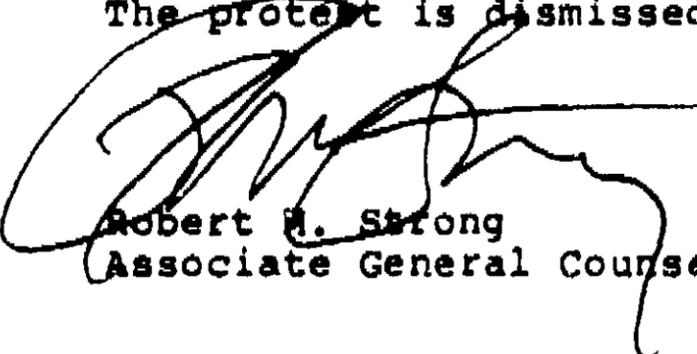
East West protested this determination to DLA on February 13 and requested that DLA reevaluate the alternate part. On March 23, DLA awarded a contract to Kampi Components Company, Inc., the next low quoter. DLA subsequently

reevaluated East West's alternate part, solely for the purpose of determining whether the item would be suitable for purchase in future procurements. DLA determined that the alternate part offered by East West did not meet the minimum NSN requirements and informed East West of this negative reevaluation by letter dated July 26, 1989. East West filed this protest in our Office on August 10, 1989.

When a protest initially has been filed with the contracting agency, the protester is not permitted to delay filing a subsequent protest with our Office until it eventually receives a final decision on the merits from the agency. The protester may wait only a reasonable length of time for an agency's response before filing a protest here. We have held that where a protest is filed with an agency and more than 4 months elapses without any response, a subsequent protest to our Office is untimely because the protester did not diligently pursue the protest. Morey Mach. Co., Inc., B-235166, May 16, 1989, 89-1 CPD ¶ 470. Here, approximately 5 months elapsed between the time that East West filed its agency-level protest and filed the protest here, and, during the interim, East West was orally advised by the DLA buyer in late April that award had been made to Kampi. Under these circumstances, East West's protest is untimely due to a lack of diligent pursuit.

In any event, essentially the same issues presented in this protest were raised by East West in a recent protest, East West Research, Inc., B-235031; B-235032, July 6, 1989, 89-2 CPD ¶ 20. We concluded that East West had not demonstrated that DLA had improperly evaluated the alternate Sellstrom part which East West had offered. The solicitation called for industrial spectacles for full time daily use as protective eyewear for workers, while the Sellstrom product is described as being designed for disposal after one use by casual visitors. Here, East West again offered visitor goggles for an industrial requirement; thus, there is no basis to conclude that DLA improperly evaluated East West's alternate product.

The protest is dismissed.



Robert H. Strong
Associate General Counsel