

Timmerman



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Swafford Industries

File: B-238055

Date: March 12, 1990

C.G. Tavares, for the protester.
Barry M. Sax, Esq., Defense Logistics Agency, for the agency.
Barbara Timmerman, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed more than 10 working days after the protester was orally informed of the basis of its protest is untimely. Oral information can be sufficient to put the protester on notice of the basis of its protest--written information is not required.

DECISION

Swafford Industries, Inc., protests the rejection of its offers submitted in response to request for quotations (RFQ) Nos. DLA400-89-T-B735 (RFQ -735), DLA400-89-T-B736 (RFQ -736), DLA400-89-T-B737 (RFQ -737), DLA400-89-T-C476 (RFQ -476), issued by the Defense General Supply Center, Defense Logistics Agency, for radio frequency cable assemblies to be used on military aircraft. The agency determined that the surplus material offered by Swafford was unacceptable because of conflicting information received from the firm concerning the packaging of the cables.

We dismiss the protest.

All four RFQs were issued under the small purchase procedures. Three firms submitted quotations for RFQs 735 and 476 and two for RFQs -736 and -737. Swafford quoted the lowest prices for all four solicitations. The agency rejected Swafford's quotations because it found that the

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firm had submitted conflicting information concerning the packaging of the cables which prevented it from assessing their condition. Swafford stated in its quotation that the material was in the original, unbroken container while information it submitted which consisted of the item description from the original 1980 surplus sale stated that the cables were loosely packed in cardboard cartons and paper bags. According to the agency, cables not in their original packages are more subject to damage which could impair their performance, and are therefore not acceptable since the cables form a critical part of aircraft radar. A purchase order for all four solicitations was issued to Sedco Systems, Inc., the second lowest offeror, on November 14, 1989.

According to both parties, the agency advised Swafford sometime in late July or early August that it required additional information concerning the age and condition of the cables. The firm responded by supplying the contract number under which the cables were originally manufactured, the package date, and the 1980 item description from the original government surplus sale where Swafford purchased the cables. As indicated, the item description from the sale listed the cables as loose in cardboard cartons and bags.

Swafford contends that there is nothing contradictory in its offer although it does not explain the apparently conflicting information concerning packaging.

We think the protest is untimely.

In early November, at the latest, the agency informed Swafford by telephone that its offer had been rejected due to the conflicting data. At that time Swafford was also read a draft of the contracting officer's letter rejecting its offer. That letter was received by Swafford on December 18. Our Bid Protest Regulations require that protests based on other than alleged improprieties in a solicitation be filed not later than 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) (1989). The protester's receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. See Bottom Line Servs., Inc., E-235800, Aug. 8, 1989, 89-2 CPD ¶ 115. Since Swafford knew, in early November, that its offer had been rejected, its protest filed with our Office on December 15 is untimely.

Although Swafford argues that it did not receive confirmation of the award to Sedco until it called the agency on December 4, this does not alter the fact that Swafford was told in November that its offer had been rejected and it is this rejection, not the award to Sedco, which forms the basis of its protest.

In any event, the agency's determination that Swafford's cables were unacceptable appears to be reasonable. Initially, we think the agency's concern about the current condition of 11-year old cables is legitimate. See Hill Indus., Inc., B-209884, Aug. 24, 1983, 83-2 CPD ¶ 246, aff'd, Hill Indus., Inc.--Request for Recon., B-209884.2, Dec. 12, 1983, 83-2 CPD ¶ 663. Further, the record shows the agency requested additional information on the condition of the cables and the protester responded with documentation that contradicted its initial submission concerning packaging. We think that was a sufficient basis upon which to reject the quote.

The protest is dismissed.

Ronald Berger
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Associate General Counsel