

144204



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Aero Components Company of Arlington, Inc.
File: B-244100
Date: June 20, 1991

Jon C. Williams, for the protester.
Ronald M. Pettit, Esq., and Matthew O. Geary, Esq., Defense Logistics Agency, for the agency.
M. Penny Ahearn, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed at General Accounting Office (GAO) more than 10 working days after protester was orally informed of basis of protest is untimely since protester may not delay filing its protest until receipt of written notification which merely reiterates basis of protest originally orally learned; letter submitted to agency within the 10-day timeliness period stating protester's future intent to protest did not constitute agency-level protest so as to toll the 10-day timeliness period for filing a protest with GAO.

DECISION

Aero Components Company of Arlington, Inc. protests the rejection of its quotation, and award of a contract to Sikorsky, Inc., under request for quotations (RFQ) No. DLA700-91-T-F269, issued by the Defense Logistics Agency (DLA).

We dismiss the protest as untimely based on information furnished by the agency. See Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1991).

DLA has submitted a contemporaneous telephone record indicating that on April 26, 1991 the contracting officer telephonically advised Aero that its quote on an alternate product was technically unacceptable because it included inadequate information to permit evaluation. Specifically, the telephone record indicates that the contracting officer advised Aero what information was needed in order for the firm's technical package to be considered complete, and that an Aero official stated the information would not be provided. By letter of that same date, the agency notified Aero of the basis for the rejection of its alternate offer. By letter dated May 7, Aero notified the contracting officer that it

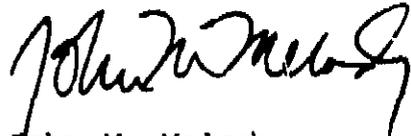
intended to file a protest with our Office because it believed it had submitted proper documentation with its alternate offer. However, Aero awaited receipt of DLA's written notice (on May 7) before filing its protest with our Office on May 16.

Aero contends that its protest is timely because, the April telephone notification notwithstanding, it did not receive "official notification" of rejection of its offer and award to Sikorsky until May 7; its protest filed on May 16, 7 working days later, would be timely under this rationale.

We find that Aero's protest is untimely. Our Regulations provide that protests must 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). Oral notification is sufficient to place a protester on notice of its protest bases, and a protester may not delay filing its protest until receipt of written notification that merely reiterates the information transmitted orally. ACCESS for the Handicapped, 68 Comp. Gen. 432 (1989), 89-1 CPD ¶ 458. Aero does not deny that it was orally advised of the reason for rejection of its quote on April 26, and we find that the information Aero received clearly was sufficient to put the firm on notice of its basis of protest. Accordingly, Aero's protest filed in our Office on May 16, 14 working days after the April 26 telephone notice, is untimely.

We note that the firm's letter of May 7 to the agency, even if received within the 10-day timeliness period (which is not clear from the record), did not constitute an agency-level protest, so as to toll the timeliness period. Although our Regulations provide that the 10-day timeliness period for filing a protest in our Office can be tolled by a protest filed with the contracting agency during that period, 4 C.F.R. § 21.2(a)(3), the mere expression of an intent to protest an award does not constitute the filing of a protest. Volumetrics, Inc., B-240284, Sept. 25, 1990, 90-2 CPD ¶ 256; see also Contracting Programmers & Analysts, Inc., B-228346, Oct. 14, 1987, 87-2 CPD ¶ 358. Since Aero's May 7 letter only announced that Aero intended to submit a future protest, it did not constitute an agency-level protest for purposes of our timeliness rules.

The protest is dismissed.



John M. Melody
Assistant General Counsel