



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Perkin-Elmer Corporation

File: B-250869

Date: December 10, 1992

John E. Warner for the protester.
Maj. William R. Medsger, Esq., and Gerald T. Williams, Esq.,
Army Materiel Command, Department of the Army, for the
agency.
Stephen J. Gary, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where protester was orally informed of basis of protest, it may not delay filing protest with agency until receipt of written notification reiterating protest basis; where agency-level protest was not timely filed, subsequent protest to General Accounting Office also is untimely.

2. Protest against conversion of invitation for bids to a negotiated procurement is untimely where filed after the closing date for submission of proposals; protest of defects apparent in solicitation must be filed prior to closing date.

DECISION

Perkin-Elmer Corporation (PEC) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA21-92-B-1036, issued by the Department of the Army for an inductively-coupled mass spectrometer. PEC alleges that the Army improperly refused to permit it to correct a clerical error in its bid and improperly converted the IFB to a negotiated procurement.

We dismiss the protest.

The IFB was issued on July 9, 1992, with bid opening set for August 20. Three bids were submitted, all of which were found to be nonresponsive. In PEC's case, the bid specified F.O.B. origin ("F.O.B. Norwalk, CT") rather than F.O.B. destination as required by the IFB. Two representatives of PEC present at the bid opening were advised of this discrepancy, and responded that it was due to a clerical error. On August 24, PEC sent a letter to the contracting officer by facsimile transmission explaining that its

intended bid price was F.O.B. destination, and that "Norwalk, CT" was a clerical error. On September 1, after considering PEC's explanation, the contracting officer informed PEC by telephone that all bids, including PEC's, had been found nonresponsive, and that the procurement would be converted to a negotiated procurement. The Army sent a written confirmation of the conversation by facsimile transmission on September 4.

Discussions were held with all offerors on September 9, and best and final offers (BAFO) were requested by September 11. All three offerors, including PEC, submitted timely BAFOs. The Army determined that Fison Instruments was the low, responsive, responsible offeror and, on September 15, in response to a telephone inquiry from PEC, the Army orally advised PEC that it was not the low offeror. On September 21, PEC filed an agency-level protest challenging the rejection of its original bid as nonresponsive and the conversion of the IFB to a negotiated procurement. On September 24, the Army awarded the contract to Fison; on the same date, the agency sent PEC a letter informing it of the award to Fison and denying its agency-level protest, which the Army found untimely.¹ PEC then protested the matter to our Office on October 13.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests such as PEC's claim that its bid was improperly rejected--that is, not based on apparent improprieties in the IFB--must be filed within 10 working days from when the protester first knew or should have known its basis for protest. 4 C.F.R. § 21.2(a)(2) (1992); Eurometalli s.p.a., B-250522, Nov. 20, 1992, 92-2 CPD ¶ _____. Our Regulations further provide that a matter initially protested to the agency will be considered timely only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Eurometalli s.p.a., supra.

PEC contends that its agency-level protest was timely because it did not receive "official" (written) notification of the rejection of its bid until September 4.² However, the record shows--and PEC does not deny--that the protester received the same information by telephone on September 1.

¹The agency also stated that, in any event, it considered the entry "F.O.B. Norwalk, CT" to be a qualification of the terms of the IFB, and that PEC's claim of clerical error was without merit.

²If PEC had not received notice until September 4, its September 21 protest would have been timely.

Oral notification is sufficient to place a protester on notice of its protest basis; 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 Components Co. of Arlington, Inc., B-244100, June 20, 1991, 91-1 CPD ¶ 586. The information received by PEC on September 1--that its bid was considered nonresponsive--clearly was sufficient to put the firm on notice of its basis of protest. Aero Components Co. of Arlington, Inc., *supra*. Accordingly, PEC's protest to the Army filed on September 21, 14 working days after the September telephone notice, was untimely. *Id.*

Since PEC did not file its agency-level protest against the rejection of its bid until more than 10 working days after learning of its basis of protest, its subsequent protest of that matter to our Office is untimely and will not be considered further. 4 C.F.R. § 21.2(a)(3); Eurometalli s.p.a., *supra*.

In the alternative, PEC argues that its protest to our Office of the conversion of the IFB to a negotiated procurement is timely because it was filed within 10 days of receipt of the agency's September 24 letter advising it of the award to Fison, which PEC states it did not receive until September 30. An allegation such as this, concerning an apparent solicitation defect--*i.e.*, that the procurement should have been conducted under the original IFB, not under negotiated procedures--must be protested to our Office prior to the date set for the submission of proposals. 4 C.F.R. § 21.2(a)(3). As noted above, the closing date for the submission of proposals under the negotiated procurement was September 11. Instead of protesting the conversion by that date, however, PEC participated in the procurement and submitted a BAFO. Only when it learned that it had not been selected under the negotiated procurement did PEC protest the IFB's conversion. Consequently, this allegation also is untimely.

The protest is dismissed.



John M. Melody
Assistant General Counsel