



Comptroller General
of the United States

Washington, D.C. 20546

Decision

Matter of: Instruments For Industry, Inc.

File: B-250693

Date: February 16, 1993

Timothy D'Arcangelis, President, Instruments For Industry, Inc., for the protester.

Daniel A. Laguaite, Esq., Department of the Navy, for the agency.

Jonathan H. Barker, Esq., and Robert G. Crystal, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest to the General Accounting Office (GAO) filed more than 10 working days after the protester learned of the initial denial of its agency-level protest is untimely. The fact that the protester submitted an expanded version of its original protest for further agency consideration after learning of initial denial does not toll the running of the 10-day limitation period.

DECISION

Instruments For Industry, Inc. (IFI), protests the award of a firm fixed price contract to Amplifier Research (AR) under solicitation number N00421-92-R-0111 issued by the Naval Electronic Systems Engineering Activity for a Wideband RF Power Amplifier--IFI Model No. M5404 or equal. The protester contends that AR was not responsive. The Navy contends that AR's offer was responsive, and that the protest is untimely.¹

We dismiss the protest as untimely.

Three companies, IFI, AR, and Power Systems Technology (PSI) submitted technically acceptable proposals in response to the solicitation. After the submission of best and final

¹The protest did not appear untimely on its face. Timeliness was not an issue until the agency report raised it as an issue.

offers, the Memorandum of Negotiations recommended that the contract be awarded to AR.

On August 27, 1992, the contracting officer approved the memorandum recommending the contract award to AR, and IFI and PSI were notified of the action.

IFI submitted a protest to the agency on September 1, 1992, in which it made essentially two arguments. First it argued that since the solicitation specified an amplifier for radiated susceptibility testing, it implied a need for a linear 400-watt amplifier. IFI argued that since AR's amplifier was linear at only 200 watts the offer to provide it was nonresponsive. IFI also argued that had it known that a 200-watt linear amplifier was acceptable, it would have offered another amplifier at a lower price.

The contracting officer denied IFI's protest on September 11, 1992. Upon receiving the denial, IFI called the contracting officer and requested an opportunity to "expand on his letter of protest." The contracting officer then told IFI that he would suspend further action to award the contract until September 18 to allow IFI time submit a more detailed explanation of its protest.

IFI submitted what it characterized as its "expanded version of [its] original protest" on September 15, making essentially the same arguments that it made in its September 1 letter. It asserted that the requirement for an amplifier with a minimum linear power of not less than 400 watts was implied by the solicitation. IFI further argued that since the solicitation named the IFI M5404, it had no choice but to offer that model, and that an offer of an amplifier that does not meet the M5404's performance is nonresponsive. The contracting officer reaffirmed the denial and awarded the contract to AR on September 25. IFI filed its protest with this Office on October 6, 1992.

Under our regulations, IFI's protest to this Office was late. If a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of "initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1992). "Adverse agency action" is "any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency." 4 C.F.R. § 21.0(f).

The Navy's September 11, 1992, denial of IFI's protest constituted an initial adverse agency action that required IFI to protest to our Office within 10 working days of when it learned of the denial, which was on that same day. The fact that IFI submitted an expanded version of its original

protest after the Navy's initial denial does not toll the running of the 10-day limitation period. PH-Logistics, Inc., B-244162, May 19, 1991, 91-1 CPD ¶ 515. As noted, the expanded version raised essentially the same issue as the original protest. Once informed of the initial adverse agency action, a protester may not delay filing a protest with our Office while it continues to pursue the matter with the agency. Id. Since IFI did not file its protest with our Office within 10 working days of learning of the agency's initial denial of the protest, its protest was untimely.

The protest is dismissed.


James F. Hinchman
General Counsel