



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

McAuliffe 152357

205277

Decision

Matter of: Lear Astronics Corporation
File: B-257244; B-257244.2
Date: July 25, 1994

DECISION

Lear Astronics Corporation protests the award of a contract by the Department of the Army to RSL Electronics, Inc. under solicitation numbers DAAA09-92-B-0221 and DAAA09-94-R-0055, a two-step acquisition for the procurement of muzzle velocity systems (MVS). On May 6, 1994, Lear filed a protest with our Office challenging the award on the basis that despite RSL's MVS's failure to pass certain required temperature and accuracy tests, the Army awarded the contract to the firm. On June 22, Lear filed a subsequent protest with our Office challenging the terms of the retesting plan used to evaluate RSL's MVS.

We dismiss the protests.

Qualification testing of all offered MVS was initially conducted in late 1992 and early 1993, under step one of the two-step acquisition process. RSL filed a protest in June 1993, timely challenging the agency's determination that its MVS did not pass all required testing and the agency's exclusion of the firm's proposal from further consideration for award. By letter of July 16, 1993, the Army notified our Office, as well as Lear, that it had decided to retest the RSL MVS (and other offerors' systems that had not passed initial testing). In that letter, the Army stated that the terms of the retest plan and the extent of testing to be conducted on each MVS to be retested had not yet been determined. RSL's protest was subsequently withdrawn. A retest plan was issued by the Army in September and retesting of the RSL (and other offerors') MVS was conducted between November 1993, and February 1994.

The Army published an announcement in the Commerce Business Daily (CBD) on April 4, 1994, that RSL (and other offerors) had submitted technically acceptable proposals having successfully passed the step one qualification testing requirements and were invited to submit price proposals under step two of the two-step acquisition process. Award

was made to RSL in late April. Based upon general information that Lear states it recently received that the Army improperly made the award to RSL despite the firm's MVS' failure to pass certain tests during the retest, Lear filed its May 6 protest of the award.¹

In May 1994, Lear requested a copy of the agency's retest plan from the Army. The retest plan was furnished to Lear on June 8, in the Army's administrative report in response to the protest. On June 22, Lear filed a separate protest of the terms of the retest plan; Lear contends the retest requirements were "watered down" in some respects from the original test requirements and that the Army improperly retested only those tests initially failed by certain competitors' MVS. Lear contends that the Army's retest plan should have required on the retest that each firm's MVS undergo the complete range of testing conducted under the original test plan even if some of the tests were successfully completed during the original tests.

The agency's report submitted in response to the protest states that RSL's MVS successfully passed the Army's temperature testing requirements during the original round of testing, and therefore was not subjected to a temperature retest, and that RSL's MVS successfully passed the accuracy test requirements of the retest plan. Lear's comments submitted in response to the agency's report fail to provide evidence to rebut the agency's determination that the RSL MVS passed the tests in accordance with the test plan.

Lear states that if given additional documents regarding the balance of data collected at the testing/retesting of RSL's MVS, it would be better able to evaluate its challenge to the agency's conclusions regarding the awardee having passed the tests. Lear was provided, under the terms of a protective order issued by our Office, documents relevant to its initial protest contention that RSL had not passed the temperature and accuracy tests; these documents were provided to both Lear's attorney and a retained consultant. These documents included the final findings of the agency that the RSL MVS had passed the tests and a contracting officer statement explaining the conduct of the tests. We view this information as directly responsive to Lear's initial protest.

¹Lear's protest of May 6 also questioned the award to RSL on the basis of the firm's suspected foreign ownership; however, Lear failed to rebut the agency's support for its award determination on this issue and has therefore abandoned this basis of protest. The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.


Lear's consultant's response that consideration of certain accuracy test rounds is contrary to "accepted test procedures," without any support, does not establish that the agency's conduct was improper. Lear has not challenged that the tests were not conducted within the established test parameters or terms of the solicitation. Since Lear's comments do not meaningfully rebut the agency's position that RSL passed the testing requirements and is technically acceptable, we see no basis to further develop this issue.

As for Lear's subsequent protest of the terms of the retest plan (including the agency allowing firms to retain possession of each MVS between the original tests and retests), we dismiss the protest as untimely filed because the protester failed to diligently pursue the information forming the basis for its protest. The retest plan was issued by the Army in September 1993; however, the protester did not seek information regarding the terms of the retest plan until May 1994. Lear states that it had no reason to question the terms of the retest plan before that time since it assumed the retest would parallel the original test plan, including retest of the full series of tests required in the original test plan whether a competitor's MVS successfully passed any of those original tests or not. The record shows, however, that Lear was informed as early as July 1993, that the terms of the retest, including the extent of the tests to be retested, was yet to be determined. Lear was aware that retesting was conducted, yet never requested information regarding the terms of the retest before May 1994, 10 months after being notified that the terms of the retest plan were under consideration and more than a month after the synopsis advising that RSL was technical acceptable. The Army advises that nothing in the retest plan is proprietary or confidential and that it would have been released to Lear upon request by the firm.

Our Bid Protest Regulations contain strict timeliness requirements for filing protests, i.e., protests must be filed no later than 10 working days after the basis for protest is known, or should have been known, whichever is earlier, and protests based on an alleged impropriety in the solicitation must be filed prior to bid opening or the time established for receipt of proposals. 4 C.F.R. § 21.2(a)(1)-(2) (1994); ACCESS for the Handicapped, 68 Comp. Gen. 433 (1989), 89-1 CPD ¶ 458. To ensure meeting these long-standing timeliness requirements, a protester has the affirmative obligation to diligently pursue the information that forms the basis for its protest. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86.

These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. Where, as here, the protester has not diligently or expeditiously pursued the information that forms the basis for its protest, we will not view the protest as timely filed. Illumination Control Sys., Inc., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546.

The protest is dismissed.


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