



Comptroller General
of the United States

1019198

Washington, D.C. 20548

Decision

Matter of: Control Data Systems, Inc.
File: B-253410.2
Date: August 18, 1994

DECISION

Control Data Systems, Inc. protests the Department of the Navy's referral of Control Corporation's responsibility to perform a contract to be awarded pursuant to request for proposals (RFP) No. N00123-92-R-0118, to the Small Business Administration (SBA) for resolution under the SBA's certificate of competency procedures (COC). Control Data contends that Control Corporation's proposal should have been rejected by the Navy as technically unacceptable to the RFP's requirement for on-line diagnostics/maintenance on automated data processing equipment rather than on the basis that Control Corporation was nonresponsible and, therefore, the matter should not have been referred to the SBA for a COC determination. We dismiss the protest as untimely.

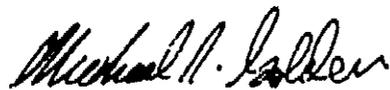
The record shows that the Navy initially rejected Control Corporation's proposal as technically unacceptable and awarded a contract to Control Data on May 5, 1993. Control Corporation filed a protest with our Office on May 11, 1993, asserting that whether its proposal adequately demonstrated that it could perform the required diagnostics/maintenance was a responsibility matter that should have been referred to the SBA for a COC determination because Control Corporation was a small business concern. Upon review of Control Corporation's protest, the Navy agreed that the matter was one of responsibility rather than technical acceptability and informed our Office that it would take corrective action and refer the matter to the SBA for review under the SBA's COC procedures.¹

¹We dismissed Control Corporation's protest as academic by letter of June 1, 1993.

By letter dated May 20, 1993, the Navy informed Control Data that Control Corporation had filed a protest with our Office and stated:

"After review of this protest, we have decided to refer the matter to the [SBA] for a determination as to whether a certificate of competency will be issued. The protest is being withdrawn. Your performance of the contract should continue pending SBA's decision. We will advise you promptly of SBA's determination."

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1994), protests alleging other than solicitation improprieties (for example, improper action by the contracting officer) must be filed not later than 10 days after the protester knew, or should have known, its basis for protest. Here, the record shows that Control Data knew its basis for protest--that the contracting officer considered the matter to be one of Control Corporation's responsibility to perform the contract rather than a matter of the technical acceptability of Control Corporation's proposal and had referred the matter to the SBA for a COC determination--upon receipt of the Navy's May 20, 1993, letter. Moreover, it was clear from the plain language of the Navy's letter to Control Data that the Navy no longer considered Control Corporation's proposal unacceptable and intended to award the contract to Control Corporation if the SBA issued a COC on Control Corporation's behalf. See Federal Acquisition Regulation § 19.602-4(b). Although the agency's actions in reinstating Control Corporation into the competition clearly raised a protestable issue, the protester waited until after the Navy informed it by letter of July 5, 1994, that the SBA had issued a COC and that the Navy intended to terminate Control Data's contract for convenience and award the remaining requirement to Control Corporation. Because Control Data did not protest to the contracting agency and did not file its protest in our Office until July 14, 1994--more than 1 year after the protester knew its basis for protest, the protest is untimely.



Michael R. Golden
Assistant General Counsel