

DOCUMENT RESUME

02056 - [A1112094]

[Protest of Contract Award for Procurement of Naval Electronic Equipment]. B-187367. April 14, 1977. 3 pp.

Decision re: West Electronics, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Electronic Systems Command; TM Systems, Inc.

Authority: A.S.P.R. 3-507.2(b). A.S.P.R. 3-805.3. 4 C.F.R. 20.
B-187367 (1977). E-186841 (1976).

A protest was made to a contract award for amplifiers and repair parts on grounds that notification of decision of earlier protest lodged by competitor included price information. This allowed said competitor to readjust prices on subsequent reprocurement. The protest was untimely, and was not considered on its merits. (SS)

02056

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*J. Cohen
Proc I*

FILE: B-187367

DATE: April 14, 1977

MATTER OF: West Electronics, Inc.

DIGEST:

Protester alleging improper disclosure of offerors' prices in agency report on previous protest did not protest upon receipt of report because contracting officer advised that there would be no further negotiations. However, GAO decision on previous protest necessitated further negotiations and indicated that best and final offers would be requested. Since offerors may revise price proposals in response to such request, protester should have known upon receipt of decision that competitor, allegedly possessing protester's prices, might change price. Accordingly, protest filed more than 10 working days thereafter is untimely.

West Electronics, Inc. (West), protests the March 7, 1977, award of a contract to TM Systems, Inc. (TM), under request for proposals (RFP) No. N00039-76-R-0288(S), issued by the Naval Electronics Systems Command (NAVALEX) to procure 18 amplifiers, associated repair parts and options for additional repair parts. West alleges that offerors' prices were improperly disclosed by NAVALEX in the course of that agency's participation in our consideration of a bid protest filed by TM against NAVALEX's determination to negotiate with West under the subject RFP, which had initially been issued to TM on a sole-source basis. TM's protest was denied in our decision TM Systems, Inc., B-187367, January 26, 1977, 56 Comp. Gen. ____, 77-1 CPD 61. West filed its protest on March 7.

By letter dated and received in our Office on October 14, 1976, NAVALEX submitted a documented report responsive to TM's protest. Copies of the report were sent to both TM and West. West alleges that it received two copies of the report and that one of those, and presumably one received by TM, disclosed certain of each other's prices, which apparently should have been omitted from the respective

copies. West believes that such disclosure violated Armed Services Procurement Regulation (ASPR) §§ 3-507.2(b) and 3-805.3 (1976 ed.). However, West states that it "made no comment on this apparent error at that time [receipt of the report] since it had been advised by the then contracting officer * * * that he intended to make award after your [the General Accounting Office's] decision without further negotiation." West further states:

"West did call this price disclosure to the attention of the Navy at a later date. At the time that West submitted its supplemental information on February 8, 1977, its representative advised the Navy contract negotiator that the price disclosure would militate against a request for further price negotiations. * * *

* * * * *

"The impact of this Navy error was brought to the attention of the protestor on Thursday, March 3, 1977, when in a telephone conversation with the contract negotiator, he stated that the 'Best and Final' offers were still being evaluated. This led West to the inference that TM Systems had in fact made more than a one-quarter reduction in its bid, a quotation that it had previously adamantly sustained. * * *

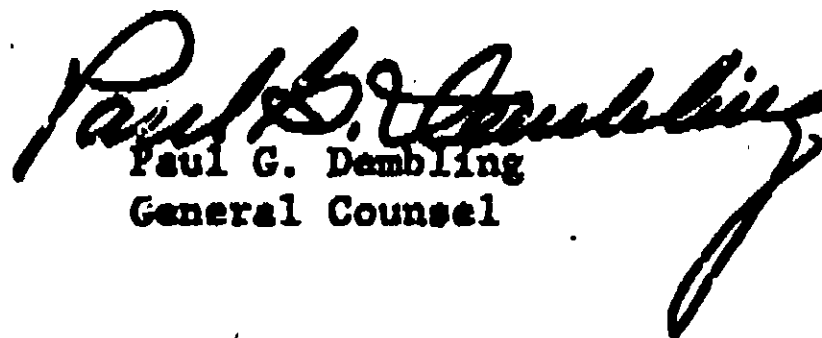
Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1976) (Procedures), provides in part:

"* * * bid protests shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

In our January 26 decision, upon considering West's failure to provide the Navy with certain documentation, we clearly indicated that further negotiations under the RFP would be necessary, and we stated that we had been advised that the Navy intended to request best and final offers from West and TM pursuant to ASPR § 3-805.3(d) (1976 ed.). Since an offeror is free to revise its proposal, including price, in response to a request for best and final offers, Fordel Films, B-136841, October 29, 1976, 76-2 CPD 370, West should have known upon receipt of the decision that TM, allegedly in possession of West's prices, would be given the opportunity to change its proposed price.

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The record indicates that West received a copy of the subject decision by February 8, but its protest to our Office was not filed until March 7. In this connection, although West states that it brought the "apparent error" to NAVALEX's attention on February 8, no protest was in fact filed at that time. Accordingly, the protest, filed more than 10 working days after its basis should have been known to West, is untimely and will not be considered on the merits.


Paul G. Dambling
General Counsel