

DOCUMENT RESUME

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[Protest against "Fatal" Errors During Procurement Is Untimely].
B-188564. April 18, 1977. 3 pp.

Decision re: Informatics, Inc.; by Paul G. Desbling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: General Services Administration;
Computer Network Corp.

Authority: 4 C.F.R. 20.2(h) (1-2). 54 Comp. Gen. 468. B-186719 (1976).

A protest was made against a GSA procurement for providing the Automated Data and Telecommunication Service with computer time. The protester alleged that fatal errors were made by GSA: refusal to accept proposal revision, failure to accept improved pricing plan, and use of a benchmark evaluation only, which created an imbalance in cost measurement criteria and a "gaming situation" for the offerors. The protest was untimely and was dismissed. (EJM)

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DECISION



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

FILE: B-188564

DATE: April 18, 1977

MATTER OF: Informatics, Inc.

DIGEST:

Although protest is filed within 10 days of agency debriefing, where grounds for protest were known well prior to debriefing, protest filed more than 10 days after those grounds became known is untimely. Similarly, protest based on method of evaluation as set forth in solicitation is untimely where it was not filed prior to closing date for receipt of initial proposals.

By letter dated March 10, 1977, Informatics, Inc. (Informatics) protested the award of a contract to Computer Network Corporation under request for proposals (RFP) No. 3FP-C4-N-BG4144, issued by the General Services Administration (GSA).

As grounds of protest, Informatics alleges the following four "fatal" errors made by GSA during the procurement process:

"(1) GSA's refusal to accept, at Best and Final, a revision to our proposal; (2) GSA's failure to accept, at Best and Final, an improved pricing plan; (3) GSA's use of the benchmark as the only method of evaluation thereby failing to consider other items of significant cost; and (4) GSA's use of a method of evaluation which created a material imbalance in the cost measurement criteria and created a 'gaming situation' for the offerors."

The purpose of the procurement is to provide GSA's Automated Data and Telecommunications Service (ADTS) with computer time for processing the Telephone Inventory Accounting System in each of GSA Regions 2, 3, 6, 7, and 9.

Based on information it asserts it received from GSA to the effect that certain computer devices had to be physically located in each Region "in order to bid," Informatics submitted its proposal to provide services in those regions in which it had such

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devices located, e.g., Regions 2, 3, and 9. Informatics states that during the course of negotiation, the contracting officer requested the protester to consider bidding on the remaining regions, e.g., Regions 6 and 7. On January 18, 1977, the protester says it sought clarification in writing that it was the Government's intent to award only to those companies who had support with either their own terminal or computer equipment in each region for which the company had proposed. GSA is alleged to have stated by letter dated January 31, 1977, that "it was not the Government's intention to place a geographic restriction on the location of an offeror's facility provided the delivery schedules * * * are satisfied." Based on the above, Informatics says it added Regions 6 and 7 in its best and final offer which was submitted on February 4, 1977, and rejected by the contracting officer on that same date on the basis that the additions of Regions 6 and 7 represented a "late proposal modification." In addition the protester says the contracting officer claimed that the new pricing could not be evaluated since two pricing plans were submitted. The foregoing was said to have been confirmed in writing by letter dated February 14, 1977.

Informatics asserts that the bases for its protest became known at the debriefing held on March 2, 1977, at which it acquired certain information regarding the cost evaluation and the awardee's prices. However, we think it is clear that the protest is based on information known to Informatics well prior to the debriefing and that the protest is untimely.

The first two "fatal errors" asserted as grounds for protest --involving GSA's refusal to accept or consider Informatics' best and final--occurred on February 4, 1977. It was on that date that the protester knew of both GSA's action and the reasons therefor. We fail to perceive any relationship of consequence between the protest allegations concerning the February 4 action of GSA and the information provided at the debriefing. Although Informatics refers to the awardee's prices (of which it claims to have been "officially informed" on the debriefing date) to argue that the Informatics best and final offer was the lowest offer and therefore should have been the basis for award, the actual issue raised by the protest is whether GSA's refusal to consider Informatics' best and final offer was proper, not whether Informatics' prices entitled it to award. Thus, we think the first two grounds for protest arose on February 4, 1977, and that the protest on those grounds is untimely under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1976), which states in pertinent part:

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"(b)(2) * * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. * * * any protest received in the General Accounting Officer after the time limits prescribed in this section shall not be considered * * *."

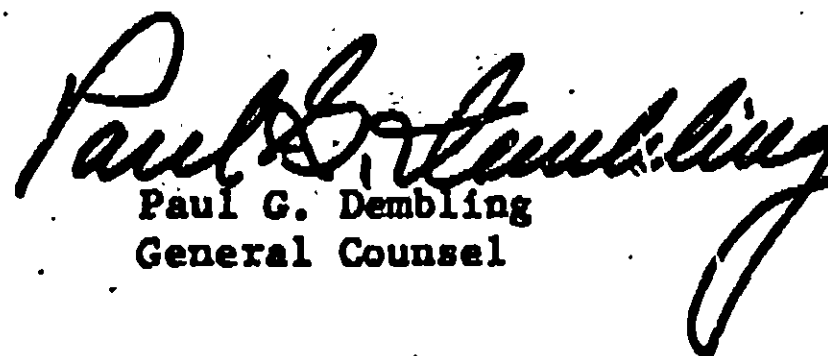
With respect to the other two grounds for protest, they relate to the method of evaluation which was clearly set forth in the RFP, and not to anything arising out of the debriefing. Section 20.2(b)(1) of our Bid Protest Procedures, supra, states that:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to * * * the closing date for receipt of initial proposals shall be filed prior to * * * the closing date for receipt of initial proposals * * *."

The initial closing date specified in the RFP is October 19, 1976. Informatics' failure to protest the evaluation provisions prior to that date renders the protest on the latter two issues untimely also.

We continue to believe that a protester may reasonably withhold filing a protest with this Office until it has had a debriefing from the contracting agency to learn why its proposal was not favorably considered for award. See Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD 312. However, where a would-be protester is sufficiently apprised of a basis for protest prior to such a debriefing, it would be inappropriate to permit a delay in filing the protest pending the debriefing since no apparent useful purpose would be served thereby. Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256.

The protest is dismissed.


Paul G. Dembling
General Counsel