

DOCUMENT RESUME

08150 - [C3488596]

[Protest against Award of Proper Score in Benchmark Test].

B-193487. December 12, 1978. 3 pp.

Decision re: Control Data Corp.; by Milton J. Socolar, General Counsel.

Contact: Office of the General Counsel; Procurement Law II.

Organization Concerned: Department of the Air Force.

Authority: 4 C.F.R. 20. E-191013 (1978).

A company protested the agency's refusal to award it the proper score on a benchmark test which affected the amount of equipment to be proposed. The protest was filed more than 10 days after notice of initial adverse agency action and was, therefore, untimely. (RRS)

DECISION



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

8576

FILE: B-193487

DATE: December 12, 1978

MATTER OF: Control Data Corporation

DIGEST:

Protest is untimely where filed more than 10 days after protester was advised of initial adverse agency action on protest initially filed with agency.

Control Data Corporation protests the refusal of the Department of the Air Force (Air Force) to award what Control Data considers to be the proper score for the benchmark run by it in regard to RFP F19628-77-R-0034. The procurement concerns acquisition of a fourth generation advance computer system required by the Air Force Weapons Laboratory, Kirtland Air Force Base. The score received directly affects the amount of equipment which Control Data is required to propose.

The protester states that the protest is timely filed because it was forwarded to this Office on November 10, 1978, after Control Data received confirmation that its position had been rejected by the Air Force in a letter received October 30. The protest was stamped in by our Office on Monday, November 13.

Nevertheless, the exhibits submitted by the protester indicate that by letter dated September 1, 1978, the Air Force advised the protester that it did not agree with Control Data regarding the proper application of the RFP, in regard to what the Air Force apparently views as changes made by Control Data to the benchmark programs at the time the programs were run. Control Data was plainly told that the Air Force believed that the changes made "clearly violate the intent of the benchmark materials," and that as a result Control Data

would be required to resubmit portions of the test results. Control Data took exception to the Air Force's conclusions by letter dated September 15, 1978. Through a letter dated September 20, 1978 (received by Control Data on or before September 27, 1978), the Air Force advised Control Data that it had "reviewed your letter of 15 September 1978, and ha[d] determined that [the Air Force's] letter of 1 September 1978 remains applicable."

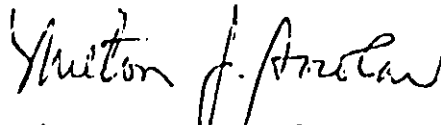
Control Data again disagreed, and was again refused by the Air Force in a telegram dated September 29, 1978. As a result of the Air Force's continuing demands Control Data retook the benchmark on October 12, 1978. By letter dated October 18, 1978, the Air Force advised Control Data that it would have to revise its proposal to reflect the equipment requirements shown to be necessary by the benchmark results evaluated in accordance with its previous interpretation. Responding to this, Control Data advised the Air Force that:

"It is evident to us that this request * * * is founded on a faulty, continuing premise that the Air Force is maintaining. * * * Control Data's agreement to run the * * * [benchmark] was not an acceptance of the Air Force interpretation of the specification but simply a demonstration that we have the capability to run the program in either mode and secondly, to show the significant disadvantage to Control Data if the Air Force interpretation * * * of the test requirement] was accepted. * * * ."

Although Control Data protests the Air Force's rejection of this response, it is clear that the protest essentially is directed at the Air Force's interpretation of the specification rather than the resulting benchmark scores. Control Data knew of the Air Force's interpretation by September 1. The September 15th rejection of Control Data's position

was unequivocal. Under Section 20.2(a) of our Bid Protest Procedures, a protest founded upon rejection of a protest filed initially with the procuring activity must be filed with GAO not later than 10 working days after the protester receives actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 20.2(u)(1978). Viewing this matter most favorably toward Control Data, i.e., assuming that the September 15 letter was intended to protest the Air Force's position, the protest should have been filed in GAO no later than 10 working days after Control Data received the Air Force's September 20 letter. Instead, Control Data continued to pursue the matter with the Air Force, notwithstanding the Air Force's repeated rejections. Cf., e.g., Information International, Inc., B-191013, May 31, 1978, 78-1 CPD 406.

We conclude that the protest is untimely. Accordingly, this case is dismissed.


Milton J. Socolar
General Counsel