

Proc II

DECISION



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

10,141

FILE: B-194043

DATE: May 16, 1979

MATTER OF: Ordnance Research, Inc.

[Protest Alleging Army Erred In Negotiation Evaluation Process]

DIGEST:

Record indicates that any oral protest to agency was resolved when protester appeared to be satisfied with agency's initial explanation for making award to another offeror. Subsequent protest to GAO was made more than 10 days after basis for protest was revealed during agency's explanation to protester, and protest therefore is dismissed as untimely.

DLG 01568

CNG 00291

Ordnance Research, Inc. protests the award of a contract to MB Associates under Request for Quotations No. DAAK10-78-Q-0153, issued by the U.S. Army Armament Research and Development Command. Ordnance maintains that it is entitled to award, alleging that the Army erred in the negotiation evaluation process. However, this protest is dismissed because it was not filed in a timely manner.

ARC 00911

Our Bid Protest Procedures require that protests, in order to be timely filed, must be received by the contracting agency or our Office, as the case may be, not later than 10 working days after the basis for protest is known. 4 C.F.R. § 20.2(b) (1978).

It is not disputed that Ordnance received knowledge of the award to MB Associates during a January 5, 1979, telephone conversation between the President of Ordnance and an Army contract specialist. There does exist, however, a dispute as to whether Ordnance lodged an oral protest with the Army at that time.

In a sworn affidavit, the Army's contracting officer states that no oral protest was ever transmitted to the Army by Ordnance. The affidavit further states that during the January 5 telephone conversation Ordnance merely stated that it was "considering a protest in

005268

lieu of a debriefing." On the other hand, Ordnance maintains that it orally protested to the agency during the course of that January 5 conversation. In any event, Ordnance was advised that it should await receipt of the agency's formal notification of its reasons for awarding the contract to another offeror.

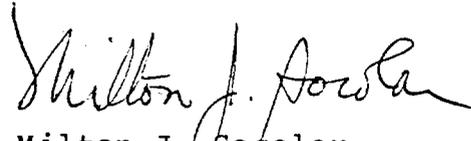
In a subsequent telephone conversation on January 8, 1979, the Army provided Ordnance with specific reasons for making award to MB Associates and also offered Ordnance the opportunity for a debriefing. The Army reports that Ordnance was satisfied with the explanation provided and did not give any further indication of protest action. Ordnance does not dispute the Army's version of this telephone conversation, but does maintain that there was no requirement for it to repeat the protest it had lodged earlier.

Assuming the protester's facts to be correct, that an oral agency protest was filed when the Army notified Ordnance during the January 5 telephone conversation of the award to another firm, we believe that the subsequent January 8 telephone discussion (the substance of which neither party disputes) resolved any previous agency protest. After being apprised of the specific bases for awarding the contract to another firm and offered a debriefing, Ordnance did not reassert its protest, request a debriefing, or raise any objection whatsoever to the specific bases for award. We think it reasonable to view this as tantamount to a withdrawal or resolution of any oral protest previously lodged.

Although Ordnance argues that the Army did not request written confirmation of the January 5 oral protest in accordance with Defense Acquisition Regulation 2-407.8(a)(1), we note that this requirement is only applicable when the oral protest cannot otherwise be resolved by the agency. Here, the agency believed the protester should have awaited notification of the reasons for rejection of its offer and we think that any protest in fact appeared to be resolved during the January 8 telephone conversation. Therefore, the Army was not required to request a written confirmation of the protest.

Viewed most favorably to the protester, its basis for protest arose as late as January 8 when it was advised by the agency why the contract was awarded to another firm. However, Ordnance's protest to this Office was filed on February 1, more than ten days after its basis for protest was known and therefore is untimely. Even if an oral protest was made initially to the agency on January 5, for the reasons stated above the protester should have known that the agency considered the matter resolved and should not have refrained from reasserting any objection it may have had at that time.

The protest is dismissed without consideration on the merits.



Milton J. Socolar
General Counsel