

330912
119099

DECISION



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

FILE: B-207836

DATE: July 30, 1982

MATTER OF: Audio Technologies, Inc.

DIGEST:

Protest against an agency's interpretation of IFB's specifications is untimely under 4 C.F.R. § 21.2(b)(2) (1982) since the protest was not filed with the agency or GAO within 10 working days of the date that the protester first learned of the agency's interpretation of the IFB's specifications.

Audio Technologies, Inc. (ATI), protests the award of a contract to Logitek Electronic Systems, Inc. (Logitek), under invitation for bids (IFB) No. 23-23-2-EA issued by the International Communication Agency (ICA) for certain radio broadcast equipment racks. ATI contends that ICA's interpretation of the specifications is incorrect and, therefore, Logitek's bid was nonresponsive. We find that the protest is untimely.

The IFB called for radio broadcast equipment racks as described in the IFB's specifications and drawings. Some specifications permitted bids based on named brands or equals; other specifications permitted bids based on named brands or approved equivalents. For example, the IFB called for terminal blocks, which would be satisfied by a Trimm Model 427B-10 or equal. The IFB also called for an amplifier assembly, which could be satisfied by an ATI Model DA-10000-1 or approved equivalent. The IFB did not specifically identify any equal or approved equivalent components.

Logitek submitted the low bid, based in part on substitutes for certain approved equivalent components like the ATI Model DA-10000-1.

ATI's higher priced bid was apparently based on ATI's belief that bidders were free to substitute unnamed components for a brand name component where the specification permitted an equal product but bidders were not free to similarly substitute where the specification permitted an approved equivalent component. ATI contends that if a bidder desired to bid based on an approved equivalent the bidder had to obtain ICA approval in advance of bidding and the ICA had to amend the IFB to identify the approved equivalent components for all potential bidders.

After bid opening, by letter dated April 2, 1982, ATI wrote to the ICA contracting officer to express its views and request ICA's concurrence in its view that any bid based on unapproved equivalent components would be nonresponsive. By letter dated April 14, 1982, ICA responded advising ATI that where the IFB specified either an equal or an approved equivalent, ICA advance approval was not required for substitution and no amendment to the IFB was required. On May 7, 1982, ATI received notice that ICA made award to Logitek and that day ATI protested to ICA contending that Logitek's bid was nonresponsive because it was based on substitute components without prior agency approval. On June 10, 1982, ATI protested here raising the same concerns that ATI presented to the agency in its April 2, 1982, letter.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1982), require that a protest be received by either the contracting agency or our Office within 10 working days after the basis of protest was known or should have been known, whichever is earlier. Here, ATI knew or should have known its basis of protest--that ATI and ICA did not interpret the specifications the same way--no later than receipt of the ICA's letter dated April 14, 1982. Absent any indication in the record concerning the date that ATI actually received the April 14, 1982, letter, we find that it is reasonable to assume that ATI received the letter within a week of its issuance. See U.S. Financial Services, Inc.--Reconsideration, B-195945.5, B-198276.2, September 25, 1981, 81-2 CPD 249.

In our view, the April 14, 1982, letter adequately notified ATI that ATI's interpretation of the specifications did not agree with ICA's, giving rise to ATI's basis for protest. Since ATI's protest was not filed with the agency or our Office within 10 working days of when ATI knew its protest basis, the protest is untimely and will not be considered on the merits. See Qualex Technology Incorporated, B-205731, December 28, 1981, 81-2 CPD 505; Tymshare, Inc., B-205996, January 22, 1982, 82-1 CPD 50.

Protest dismissed.

F. H. Barclay Jr.
For Harry R. Van Cleve
Acting General Counsel