

DECISION

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

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FILE: B-215167

DATE: September 24, 1984

MATTER OF: Decom Systems, Inc.

DIGEST:

Protest is untimely where it was not filed within 10 working days after the protester notified the agency of its intent to file a protest with GAO, and neither the protester nor the record suggests that the protester subsequently received any information constituting a further basis of protest.

Decom Systems, Inc. protests the proposed award of a contract to Advance Telecommunications, Inc. by the National Aeronautics and Space Administration (NASA) under request for proposal (RFP) No. 5-40670/180, a small business set-aside for telemetry and communications processors. We dismiss the protest.

Decom contends that the agency's establishment of a competitive range of one was improper because it amounted to a sole source procurement. The protester also alleges that Advanced Telecommunications is nonresponsible because it lacks relevant experience and has only three employees; that contrary to the small business set-aside procedures, Advanced Telecommunications did not write its own proposal; and that Advanced Telecommunications is using "buy-in" tactics to get the award.

NASA argues that Decom's protest should be dismissed as untimely. The agency states that it notified Decom by letter dated March 20, 1984 that its proposal had been rejected as technically unacceptable. This notice included the specific reasons for the agency's determination. Decom replied by letter dated April 3 asking for the dollar amount of the contract to be awarded and for a debriefing. The letter also stated that Decom reserved the right to protest upon receiving the requested information.

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According to NASA, Decom was notified by phone on or about April 10 that the dollar amount of the proposed contract could not be made available until after award and that a debriefing would be scheduled at a later time. On April 20, without having received the requested information or a debriefing, Decom sent a telex to the contracting officer stating that it was "necessary to protest the procurement process and request that the GAO review this entire matter for possible violation of NASA procurement regulations and award procedures." The telex also stated that Decom would be forwarding its protest shortly to the General Accounting Office (GAO). We received Decom's protest on May 9, 1984.

NASA contends that it is clear that Decom knew the basis for its protest no later than April 20, when the firm sent the telex to the agency and stated its intent to protest to GAO. Since Decom did not file its protest here until May 9, NASA argues that the protest is untimely because our Bid Protest Procedures require that protests such as this be filed within 10 working days after the basis of protest is known or should have been known. See 4 C.F.R. § 21.2(b)(2) (1984). We agree.

First, the April 20 telex was not adequate to constitute a protest to the agency but instead merely indicated an intention to file a future protest with GAO. See Amray, Inc., 62 Comp. Gen. 202 (1984), 84-1 CPD ¶ 163. We have held that the time for fixing the date of a protest for timeliness purposes is when the protest is made and not when the protester indicates an intention to file a future protest. JRS Industries, Inc., B-208867, Apr. 4, 1983, 83-1 CPD ¶ 348.

It is clear, however, that Decom believed it had a basis for protest on April 20, 1984. Decom does not contend, and the record does not suggest, that the protester received any information after April 20, 1984 which constituted a further basis for the protest filed here on May 9. In view of the lack of any objective evidence to the contrary, we conclude that Decom knew not later than April 20 of the basis for its protest.

See Nielsen, Maxwell & Wangsgard, 61 Comp. Gen. 370 (1982), 82-1 CPD ¶ 381. Since Decom's protest was not filed within 10 working days thereafter, it is untimely and will not be considered.

For the benefit of the protester, we point out the following:

First, the agency's establishment of a competitive range of one does not make this a sole source procurement. The agency issued a competitive RFP, and received and evaluated four proposals so that it is clear that the procurement was conducted on a competitive basis.

Second, GAO does not review a challenge to an affirmative responsibility determination absent a showing of possible fraud on the part of procuring officials or that the solicitation contains definitive responsibility criteria which have been misapplied. Consolidated Building & Maintenance Corporation, B-213584, Mar. 13, 1984, 84-1 CPD ¶ 300. Neither exception would apply here.

Third, the protester has presented no evidence supporting its allegation that Advanced Telecommunications did not write its own proposal, and we are unaware of any express prohibition on such conduct.

Finally, the possibility of a buy-in is not illegal and does not provide a basis upon which an award may be challenged. National Office Moving Company; Keahey Moving and Storage, B-203304; B-203304.2, Jan. 4, 1982, 82-1 CPD ¶ 4.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel