

DECISION

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

FILE: B-220146 **DATE:** October 31, 1985
MATTER OF: Organization Systems
Incorporated

DIGEST:

1. Protest based on information provided to protester at debriefing filed with GAO more than 10 working days after debriefing is untimely.
2. Where initial protest filed with the contracting agency is untimely because the protest, based on information received under Freedom of Information Act (FOIA) request, was filed with the agency more than 10 working days after the protester's receipt of the FOIA information, subsequent protest to GAO will not be considered.

Organization Systems Incorporated (OSI) protests against the award of a contract for communications skills training courses to Behavioral Research Incorporated (BRI) under request for proposals (RFP) No. M00027-85-R-0027 issued by the United States Marine Corp (USMC).

OSI argues that USMC's technical evaluation of its proposal was not consistent with the evaluation criteria contained in the RFP. OSI also alleges that BRI, in its technical proposal, did not accurately describe OSI's performance as the incumbent under the prior contract which allegedly prejudiced USMC's technical evaluation board (TEB) against OSI. OSI further asserts that BRI's proposal misrepresented BRI's qualifications and capabilities to perform the work.

Based on information received in the agency report and in the protester's comments to the agency report, we conclude that OSI's protest is untimely and dismiss the protest.

On June 24, 1985, USMC notified OSI that award to BRI was to be made based on initial offers without discussions as permitted under the RFP. On June 25, 1985, OSI protested the award of the contract, specifically challenging the USMC decision to award without discussions, and also questioning the determination to award to BRI because of OSI's "proven" technical competence as demonstrated by its previous and

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current performance of the contract. OSI requested a debriefing and a copy of BRI's technical and cost proposal. On July 2, 1985, OSI was given a debriefing by telephone. OSI was advised that it did not receive the maximum points allowable under the evaluation scheme in five areas: (1) design, concept of program of instruction, (2) contractor qualifications, (3) personnel qualifications, (4) knowledge of agency needs and (5) quality of instruction material. The contracting officer also explained why OSI lost points under these evaluation factors. By letter dated July 1, 1985, but actually written after the debriefing, OSI stated its belief that its agency protest would be resolved in its favor. OSI further advised that its "detailed protest [would] be forwarded within 30 days of receiving copies of . . . [documents concerning the evaluation]" under the Freedom of Information Act (FOIA).

By letter of July 10, 1985 (received by OSI on July 10), the USMC contracting officer specifically responded to OSI's protest of June 25. The contracting officer stated that USMC did not believe discussions were necessary in this case or advantageous to the government. Also, with regard to OSI's technical competence, USMC stated that the numerical ratings assigned OSI had been provided to OSI at its debriefing and that OSI was found acceptable, but that USMC awarded BRI the contract because its offer was rated the best technically and offered the lowest price. USMC then thanked OSI for its interest in the acquisition and stated that it looked forward to OSI's participation in future procurements. USMC also advised OSI it would release BRI's technical proposal.

Also, on or about July 19, 1985, OSI received a copy of a letter from USMC Headquarters, dated July 12, 1985, responding to an inquiry from a Congressman on behalf of OSI. USMC advised that it had reviewed OSI's concerns, and USMC believed its award to BRI was proper. On July 23, 1985, OSI sent a followup letter to the USMC contracting officer requesting acknowledgment of OSI's July 1 letter and pointing out that it had not received BRI's technical proposal which USMC had promised to send OSI. OSI states that, on July 31, USMC acknowledged receipt of OSI's correspondence dated July 1 and July 23 and that, on August 1, it received the BRI technical proposal. By letter dated August 19, 1985, to USMC, OSI renewed its FOIA request and, for the first time, raised allegations based on BRI's

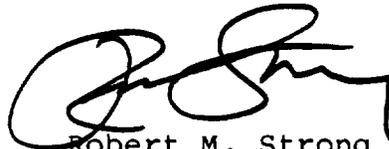
technical proposal. On August 26, 1985, OSI received more information in response to its FOIA request. On August 30, 1985, OSI filed its protest with GAO.

In its protest filed with our Office on August 30, 1985, OSI for the first time stated its specific bases of protest concerning the technical evaluation of its proposal. OSI disputes the scoring by the TEB and argues that it lost points because the TEB was prejudiced against OSI and downgraded it for factors not identified in the RFP. However, its protest in this regard is based entirely on information which it obtained at the debriefing and not from information received under its FOIA request. Thus, OSI was aware of these bases of protest on July 2, 1985, the date of its debriefing. However, the first time OSI raised these issues was on August 30, in its protest to our Office.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985), provide that a protest, the basis of which is not apparent on the face of the solicitation, must be filed within 10 working days after the protester knew or should have known the basis of protest, whichever is earlier. Here, OSI clearly knew its basis of protest regarding the evaluation of its proposal from the debriefing on July 2, 1985, but did not protest these issues until its filing with this Office on August 30. Thus, its protest concerning USMC's technical evaluation of OSI's offer is untimely. Professional Review of Florida, Inc., et al., B-215303.3, et al., Apr. 5, 1985, 85-1 C.P.D. ¶ 394.

Furthermore, OSI's protest allegations based on BRI's proposal are also untimely. The record shows that OSI received the BRI technical proposal on August 1, 1985, but did not raise its concerns about the alleged misrepresentations contained in BRI's proposal until its August 19, 1985, letter to the USMC. Even assuming this letter constituted a protest to USMC and that the letter was delivered to USMC on the same day it is dated, the protest was not filed timely since our Bid Protest Regulations require that protests be received in our Office or the contracting agency within 10 working days after the basis of the protest is known. 4 C.F.R. § 21.2(a)(2), supra. The letter of August 19, 1985, was filed more than 10 working days after OSI received BRI's technical proposal. Where the initial protest is untimely filed with the contracting agency, a subsequent protest to GAO will not be considered. See Emery Worldwide, B-218440, May 24, 1985, 85-1 C.P.D. ¶ 603.

In considering the timeliness of OSI's protest to our Office, we recognize that on June 25, 1985, OSI filed a protest with USMC, and OSI also asserts it filed a protest on July 2 with the agency after the debriefing. However, in this correspondence, OSI did not protest the specific issues it raised in its protest with our Office. Thus, these earlier filings do not affect our decision that the August 30 protest which states different bases of protest is untimely. Later-raised allegations must independently satisfy the timeliness requirements contained in our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1985). See Stalker Brothers, Inc., B-217580, Apr. 26, 1985, 85-1 C.P.D. ¶ 476.



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