

**DECISION**

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

**FILE:**

B-221500

**DATE:** April 25, 1986**MATTER OF:**

Aerodyne Investment Casting, Inc.

**DIGEST:**

1. When an initial protest has properly been dismissed as untimely, a second protest on essentially the same grounds is also untimely, and the General Accounting Office will not consider it on the merits. The fact that the first protest was preaward and the second was filed after award does not change this result.
2. Protest challenging qualification requirements is untimely under 4 C.F.R. § 21.2(a)(2) where it is not filed within 10 working days of the date that the agency advises the protester of testing requirements and costs.

Aerodyne Investment Castings, Inc., protests the Defense Logistics Agency's (DLA) award of a contract for a quantity of turbine rotor blades for the T-64 helicopter engine to Walbar, Inc. under request for quotations (RFQ) No. DLA500-85-R-0714. In essence, Aerodyne questions the procedures established by DLA to approve prospective contractors as acceptable sources of supply and the fact that it has not been so approved. Aerodyne initially filed a protest on these grounds on August 28, 1985. We dismissed the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), because it was not filed within 10 working days of the date that Aerodyne knew or should have known of the basis of protest. We also dismiss this protest.

The acquisition was initiated in response to two purchase requests, generated in January and October 1984. At the time, General Electric was the only known source for the turbine rotor blades, and, consequently, DLA intended to conduct this acquisition on a sole source basis. The agency subsequently discovered that Walbar was the manufacturer of this product for General Electric and approved that firm as an acceptable source, provided it used the most recent

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General Electric drawings. After the procurement was synopsised in the Commerce Business Daily, Aerodyne, on March 8, 1985, submitted technical data to appropriate officials within the Defense Industrial Supply Center (DISC), a field activity of DLA, also seeking to become an approved source.

On May 10, 1985, DISC issued the subject solicitation, which as amended sought prices for a basic quantity of 37,425, a first alternate quantity of 55,000, and a second alternate quantity of 74,000 turbine rotor blades. The purchase item description set forth in the RFQ identified this product by a General Electric part number and listed Walbar as an acceptable source of supply. The solicitation contained a standard "Product Offered" clause providing directions for firms offering "alternate products." The term is defined as any product other than the identical product cited in the purchase description that is produced either by the manufacturer cited or by a firm that manufactures the item for the manufacturer cited in the purchase description. Offerors such as Aerodyne that propose alternate products are required to submit sufficient documentation to enable the government to determine whether the product is indeed equal to the product cited in the purchase description.

Walbar and Aerodyne submitted unit prices of \$78.25 and \$44.85, respectively, for the basic quantity. (Aerodyne's price remained level for the additional quantities, while Walbar's decreased by a few cents.) However, as of the closing date for receipt of quotations, technical officials to whom the materials submitted by Aerodyne in March had been referred had yet to determine whether Aerodyne was an acceptable source. On June 24, 1985, DISC's Directorate of Technical Operations forwarded to the contracting officer a determination by the Navy's Aviation Supply Office, which has engineering responsibility for the rotor blades, stating that Aerodyne could not be approved because its technical data package was incomplete, and that before it could be approved, a qualification test, at an estimated cost of \$500,000, would have to be conducted. By letter dated August 8, 1985, the contracting officer apprised Aerodyne of these findings. He also advised the firm that due to the current supply situation, award could not be delayed pending testing. The government, the letter concluded, had initiated a cost-benefit analysis to assess the total cost of scheduling and performing the required tests, and would advise Aerodyne of the result.

Aerodyne filed its initial protest with our Office on August 28, 1985, arguing that its price was lower than that of the proposed awardee, Walbar, and challenging the August 8 determination that Aerodyne was not an acceptable source. Specifically, Aerodyne argued that the Aviation Supply Office had agreed to supply it with certain glass plates that were required to complete its technical data package, but had failed to do so; that the cost of testing would be offset by Aerodyne's lower prices; and that DLA's then-current supply situation was not critical. By notice dated September 3, 1985, we dismissed this protest as untimely under 4 C.F.R. § 21.2(a)(2). This regulation provides in pertinent part that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. Because Aerodyne acknowledged receipt of the contracting officer's letter on August 12, 1985, its protest had not been filed within the requisite timeframe. On September 23, 1985, Aerodyne requested reconsideration of this decision. We dismissed this request by notice dated September 26, 1986 under 4 C.F.R. § 21.12(b), which requires requests for reconsideration to be filed within 10 working days after the basis of the request is known, and under 4 C.F.R. § 21.12(a), which requires a detailed statement of the factual or legal grounds warranting reversal of our original decision. Aerodyne had not met either requirement.

Following dismissal of the initial protest, the Aviation Supply Office, by letter dated September 17, 1985, again advised Aerodyne of the requirements that it must meet to become an approved source of supply for the rotor blades. The letter identified and broke out the estimated costs for qualification of Aerodyne's product, which totaled \$1,177,000, and stated that the bulk of this sum was attributable to the costs of conducting a T-64 helicopter engine run. The letter also stated that complete technical data, to be supplied by General Electric, would not be available for 200 days, precluding Aerodyne from supplying samples for an engine test run scheduled for December 1986-January 1987.<sup>1/</sup>

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<sup>1/</sup> Upon dismissal of Aerodyne's initial protest, the contracting activity also began negotiations with Walbar. Due to difficulties in acquiring cost and pricing data from Walbar's subcontractor, award for the full quantity covered by the RFQ was delayed. On December 17, 1985, to satisfy immediate, critical needs, DLA awarded Walbar an interim contract for 3,570 of the rotor blades at its price for the base quantity. The contracting officer was prepared to award a contract for the remainder of this procurement at the time Aerodyne filed the current protest. In February 1986, DLA actually awarded such a contract to Walbar notwithstanding the protest.

Aerodyne filed this protest on December 24, 1985, enclosing a copy of the Aviation Supply Office's letter of September 17. Once again, Aerodyne protests the requirements for qualification of its product. Specifically, Aerodyne contends that one test--the 500-hour cycle run and periodic tear down, which has an estimated cost of \$500,000--is not necessary. It also alleges that DLA could save money by repairing used rotor blades and that the time for obtaining technical data from General Electric is unreasonable.

To the extent that Aerodyne is resubmitting its initial protest, objecting to an award at a price higher than its own and to the determination that it was not an acceptable source for this procurement, we note that its protest on this basis was properly dismissed in the first instance, and therefore we will not consider it now. See Greyhound Support Services, Inc., B-219790.3, Oct. 29, 1985, 85-2 CPD ¶ 480. Nor does the fact that award has now been made, when the initial protest was preaward, change this result. See Sermor, Inc., B-220041.3, Oct. 23, 1985, 85-2 CPD ¶ 450.

To the extent that Aerodyne is raising a new protest based on the more detailed statement of qualification requirements and costs contained in the September 17, 1985 letter to Aerodyne from the Aviation Supply Office, clearly, Aerodyne did not file this protest within 10 working days of receipt of this letter, as required by 4 C.F.R. § 21.2(a)(2). We therefore also dismiss this protest.

*Ronald Berger*  
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 General Counsel