

# DECISION



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

FILE:

B-222585.2

DATE: June 6, 1986

MATTER OF:

Radiation Systems, Inc.

## DIGEST:

1. Protest not filed within 10 days of notification of adverse agency action is untimely.
2. Protest that award criteria should be changed because an amendment to the solicitation changed the contract type from cost plus fixed fee to fixed price is untimely because it was not filed prior to closing date for best and final offers.
3. A mere request for best and final offers is sufficient to satisfy the requirement for discussions.

Radiation Systems, Inc. (RSI), protests the award of a contract to any other company under request for proposals (RFP) No. N41756-85-R-8511, issued by the Navy Engineering Logistics Office for an antenna tracking system.

The protest is dismissed.

The solicitation was issued on September 13, 1985, and offers were due on November 12, 1985. On March 24, 1986, the solicitation was modified to provide for a change from a cost-plus-fixed-fee-type contract to a firm, fixed-price contract. Best and final offers were required by April 15, 1986.

RSI alleges that in view of the solicitation requirements, award cannot be made to any other bidder other than RSI. Specifically, RSI alleges that no discussions were held by the Navy with RSI or other prospective contractors. RSI states that discussions should have been required for this procurement. RSI also contends that the solicitation's limitation of the technical management portion of the contractor's offer to 75 pages is inadequate and should be

035693

changed. Finally, RSI states that when the contract type was changed from cost plus fixed fee to fixed price, the award criteria which had placed price as the least important factor should have been changed.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date. Alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1985). Where a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3).

On October 11, 1985, the Navy denied RSI's request to increase the number of pages for the technical management portion of its offer. Accordingly, this basis of RSI's protest to this Office, received on May 21, 1986, was untimely as it was not filed within 10 days of notification of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). RSI's protest that the award criteria should be changed because the solicitation was amended to change the contract type is also untimely because it was not filed by the closing date for receipt of best and final offers on April 15, 1986. 4 C.F.R. § 21.2(a)(1). Likewise, RSI's contention that discussions should have been held is also untimely. When the amendment requested best and final offers by April 15, 1986, RSI knew that no discussions were going to be conducted. However, RSI did not file its protest at this Office until May 21, after the closing date. Accordingly, this basis of protest is also untimely. In any event, we have held that a mere request for best and final offers is sufficient to satisfy the requirement for discussions. ATI Industries, B-215933, Nov. 19, 1984, 84-2 C.P.D. ¶ 540 at p. 7.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General Counsel