



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Memorex Corporation
File: B-223951
Date: October 20, 1986

DIGEST

1. Specific objections to contracting agency's technical findings that protester's product did not meet agency requirements which resulted in agency's rejection of protester's offer, first raised several weeks after bases of objections were known, are untimely filed and will not be considered. See 4 C.F.R. § 21.2(a)(2) (1986). Protester's generalized earlier protest was not sufficient to constitute a timely protest when the protester was on notice of specific bases of protest at time earlier protest was filed but chose not to raise them.

2. Even if oral argument presented to contracting agency was intended to constitute a protest to the agency, oral protests are no longer provided for under the Federal Acquisition Regulation. Consequently, those oral arguments can not be considered as a protest.

DECISIONS

Memorex Corporation (Memorex) has protested the decision of the National Institutes of Health (NIH) to reject the company's response to NIH's published synopsis of its intent to place an order for computer tape cartridges against a "non-mandatory" General Services Administration Supply Schedule contract with Wabash DataTech Inc. The synopsis stated that the tapes had to meet "all current IBM requirements and specs for the CST and utilization on the IBM 3480 CST drive" and that interested vendors were invited to respond in writing with sufficient information to demonstrate their compliance with the specifications.

We dismiss the protest.

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NIH reports that two firms responded by the required cutoff date of July 23, 1986, one of which was Memorex. NIH reviewed Memorex's technical data and concluded that in at least two areas, involving "tape thickness" and the "file-protect selector," the data materially deviated from the IBM requirements. After deciding that neither Memorex nor the other respondent could meet the technical requirements, NIH issued a purchase order on August 1 to Wabash. By letter of August 5, NIH specifically informed Memorex of these perceived deficiencies concerning tape thickness and the file-protect selector. Specifically, NIH's letter stated that Memorex's literature specified "1020 to 1330 microinches for total tape thickness which deviates from the IBM specifications of 1060 to 1330 microinches." As to the file-protect selector, NIH noted in its letter that the selector "rotated freely and failed to positively position itself in either the File Protect or Write-On Position."

Upon receipt of NIH's letter, Memorex immediately filed a general protest with our Office on August 8, 1986, which contended only that Memorex's cartridge, in fact, "exceeds all published specifications for this product" and should not have been rejected especially since Memorex was allegedly supplying the "same cartridge under the same specifications to other Government agencies."

In responding to NIH's report to our Office concerning the above specific deficiencies concerning tape thickness and file-protect selector, Memorex has now, for the first time, specifically argued before us that there is a typographical error in NIH's statement of the required tape thickness and that, in any event, the tape thickness deviation is not material. Moreover, as to the file-protector selector, Memorex has now stated that NIH is completely erroneous in two specific respects. Memorex argues that there is "no pertinent requirement about the file protect assembly" in the referenced "IBM specifications" and that, in any event, the non-IBM standard which NIH is allegedly actually referring to requires specialized testing equipment to determine the adequacy of Memorex's file protect assembly--testing which was allegedly not done by NIH.

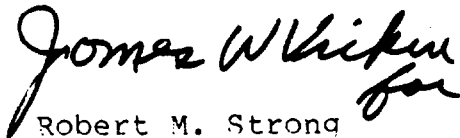
It is apparent that Memorex could have easily advanced these specific arguments--first filed with our Office on September 26--in its earlier general protest to our Office but chose not to do so.

It is clear that NIH's August 5 letter placed Memorex on notice of NIH's specific reasons for rejecting Memorex's tape. In these circumstances, since the earlier protest was so generalized compared to the very specific objections now

raised, we consider it clear that these comments of Memorex on the NIH protest report, in fact raise specific new grounds of protest rather than comment on NIH's protest report.

We note that to the extent, Memorex alleges that it also orally discussed these specific arguments with NIH on August 11, even if this is true and Memorex intended these oral arguments to be a protest, oral protests to contracting agencies are no longer recognized under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.101 (1985); K-II Construction, Inc., B-221661, Mar. 18, 1986, 65 Comp. Gen. (1986), 86-1 C.P.D. ¶ 270. Thus, these oral comments cannot be considered as a protest.

Consequently, we now consider Memorex's specific bases of protest to have been untimely filed as they could have and should have been filed within 10 working days after receipt of NIH's letters of August 5. See 4 C.F.R. § 21.2(a)(2) (1986). An initial general protest, as filed by Memorex in this case, is not sufficient for the purpose of filing a timely protest when the protester is on notice of the specific bases of protest but chooses not to raise them until after the time of a timely filing with our Office. See Synercom Technology, Inc., B-224477, Oct. 1, 1986, 86-2 C.P.D. ¶ ____; Pease & Sons, Inc., B-220449, Mar. 24, 1986, 86-1 C.P.D. ¶ 288. Accordingly, we will not consider these specific bases of protest, and they are dismissed.



Robert M. Strong
Deputy Associate General Counsel