



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Defense Research Incorporated
File: B-225515
Date: January 6, 1987

DIGEST

Protest against solicitation impropriety--specifications which allegedly do not meet the agency's current requirements--is untimely when filed after the closing date for receipt of proposals and more than 10 working days after the information which provided the basis for the protest was known to the protester.

DECISION

Defense Research Incorporated (DRI) protests the award of any contract under request for proposals (RFP) No. DAAA09-86-R-0107 for rocket fin and nozzle assemblies, issued by the Army. DRI asserts that the technical specifications contained in the RFP do not reflect the agency's current requirements for this item.

We dismiss the protest.

DRI currently is providing the same rocket fin and nozzle assemblies to the Army under contract No. DAAA09-86-C-0327. On November 21, 1986, DRI received a letter from the contracting officer, dated November 18, which amended the contract specifications by incorporating an Engineering Change Proposal (ECP) which had been delineated in a September 2 letter from the Army to DRI. DRI asserts that since the current RFP is for the same item, the same specification change is material and, therefore, applicable to this RFP because it reduces certain production tolerances, thus having a material effect on production cost.

The current RFP was issued on March 5, 1986, with a closing date of June 10. DRI's protest was filed in our Office on November 25. DRI concedes that a protest against solicitation specifications normally must be filed prior to the

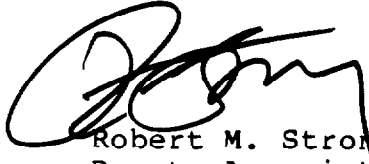
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closing date for submission of proposals. However, DRI contends that the specification changes which it believes provide the basis for the protest were not directed until the November 18 letter which DRI received on November 21. Accordingly, DRI contends that its protest is timely since it acted diligently and filed within 10 working days after November 21, the date on which DRI contends its basis for protest was known. Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 C.P.D. ¶ 149.

On the contrary, as the Army contends, the record establishes that DRI was aware of the specific specification changes at issue at a much earlier date. The November 18 letter merely incorporates ECP's into DRI's current contract by reference to previously identified changes. The protester had initiated these same changes by a letter dated August 5, in response to which the Army's letter dated September 2 sets forth the specification changes. In this letter, the Army contracting officer requested DRI to contact him if it had any questions regarding the delineated changes, but DRI did not raise any questions prior to receiving the Army's November 18 letter. Thus, the Army's November 18 letter does not provide any relevant new information. Rather, DRI was made aware of the specification changes which provide the basis of its protest, at the latest, in the Army's letter of September 2. This letter made it clear that the changes specified therein had been "generated by technical personnel" pursuant to the August 5 letter from DRI and subject only to objection by DRI. Since DRI did not object, and apparently had already incorporated these changes in its performance of the contract, DRI's protest filed more than 10 working days thereafter, is untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2), (1986).

Moreover, we note that a November 21 letter from DRI to the Army responds to the specified ECP's in terms of the fact that, while the Army indicates that the changes are minor and a no-cost item, DRI believes that the changes have a substantial cost effect on DRI's production costs under the existing contract. Thus, DRI is attempting to use its protest against the current solicitation as a means to establish that the changes are material and consist of more than just clarification of the technical data package under the prior contract. This issue constitutes the identical claim which DRI will be required to resolve with the Army under the disputes clause of its contract. Under these circumstances, we do not think that our Office should provide DRI with what would be essentially another forum to decide the issue which may constitute a claim under the existing contract. Eastern Technologies Ltd., B-224006, Nov. 7, 1986, 66 Comp. Gen. ___, 86-2 C.P.D. ¶ 533.

Accordingly, we dismiss the protest under section 21.3(f) of our Bid Protest Regulations, without obtaining a full report from the Army or having a conference on the protest, as requested by the protester, because it is clear that the protest is not for consideration, and a conference would serve no useful purpose. Connie Hall Co., B-223440, July 9, 1986, 86-2 C.P.D. ¶ 52.



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