



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: EG&G Washington Analytical Services Center,  
Inc.

File: B-231168

Date: May 24, 1988

### DIGEST

Protest of agency's use of Defense Contract Audit Agency (DCAA) recommended labor and overhead rates to evaluate cost proposal is untimely when filed with General Accounting Office more than 10 working days after DCAA rates were given to protester and protester was able to determine that the rates were allegedly erroneous.

### DECISION

EG&G Washington Analytical Services Center, Inc. protests the award of a contract to TRACOR Applied Sciences, Inc. under request for proposals (RFP) No. N00024-88-R-6004(Q), issued by the Navy for engineering and management services for an anti-submarine warfare combat system for Navy surface ships. EG&G contends that the Navy improperly evaluated its proposal. We dismiss the protest in accordance with our Bid Protest Regulations without obtaining a report from the Navy, since it is clear from the material furnished by EG&G and information provided by the Navy that the protest is untimely. 4 C.F.R. § 21.3(m) (1988).

After the contract was awarded, at an April 11, 1988, debriefing, EG&G says that it was informed that as part of the cost evaluation, its proposed labor and overhead rates were compared to Defense Contract Audit Agency (DCAA) rates and that the cost evaluation was based at least in part on the agency's projected costs for the project. EG&G says that it requested the DCAA rates used in the evaluation and that on April 14, the Navy gave the firm a plain piece of paper which had on it labor and overhead rates allegedly supplied by DCAA.

EG&G says that it could not reconcile these rates with its own financial data. For instance, the firm notes that the recommended labor rates were higher than its proposed rates

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in 11 of the 18 categories. The firm concluded that those rates were not based on EG&G financial data. From April 18 until April 21, EG&G says it contacted DCAA and Navy personnel to determine the source of the DCAA rates and to determine if the rates were in fact used to evaluate its proposal. According to the protester, on April 21 the contracting officer confirmed that she had orally accepted the DCAA recommended rates and DCAA finally refused to explain the source of the rates.

In its protest, EG&G contends that the DCAA recommended rates were erroneous and that the Navy did not follow the RFP evaluation scheme in conducting its cost evaluation. Further, the protester says that its proposal is technically superior to the awardee's and that the Navy acted in bad faith by providing the awardee with a list of EG&G employees which should be hired by the awardee.

Our Regulations require that protests of other than solicitation improprieties must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). EG&G's protest challenges the Navy's use of the rates supplied by DCAA to evaluate its proposal. EG&G contends that it did not have a basis for protest until April 21 when the Navy and DCAA refused to answer the firm's questions regarding the origin and use of the DCAA rates. EG&G was, however, told on April 11 that the DCAA rates had been used to evaluate its proposal and the firm was able to determine on April 14 what those rates were. Thus, the protester knew or should have known its basis of protest--the Navy's use of the DCAA recommended rates in the cost evaluation--on April 14 and should have filed the protest on or before April 28. The firm's subsequent contacts with DCAA and the Navy were unnecessary to determine the basis for protest since those communications did not raise any new grounds upon which the firm based its protest. ITT Cannon, B-228521, Nov. 5, 1987, 87-2 CPD ¶ 451.

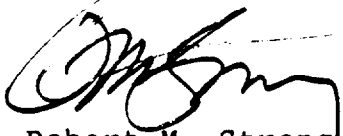
Although the protester says that it "submitted" its protest on April 28, the protest itself has on it a time/date stamp from our Office stating that it was received April 29, 1988, at 8:33 a.m. Under our Regulations, the term "filed" is defined as having been received by our Office. 4 C.F.R. § 21.0(g). Moreover, our time/date stamp is the only acceptable evidence of the time of receipt of materials relating to protests filed in our Office absent affirmative evidence to the contrary to show actual earlier receipt. Atlantic Management Center--Reconsideration, B-228068.3, Sept. 30, 1987, 87-2 CPD ¶ 316.

We also find that EG&G's allegations that its technical proposal was superior to the awardee's is untimely. Based on EG&G's protest and the firm's record of the debriefing, it is clear that EG&G became aware of this issue at the latest at the April 11 debriefing. Since the protest was not filed until more than 10 working days after the debriefing, this issue is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

It is unclear whether the protester's contention that the Navy provided the awardee with a list of EG&G employees is timely. In any event, since we are aware of no procurement law or regulation that prohibits such agency action, this allegation does not state a valid basis for protest and will not be considered. 4 C.F.R. § 21.3(m).

Finally, EG&G requests that if its protest is untimely, we consider it under the "good cause" exception to our timeliness Regulations. 4 C.F.R. § 21.2(b). We limit the use of that exception to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. LORS Machinery, Inc.--Reconsideration, B-227499.2, July 13, 1987, 87-2 CPD ¶ 41. EG&G has suggested no such reason here.

The protest is dismissed.



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