



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: 3M Company
File: B-231810; B-231811
Date: July 8, 1988

DIGEST

1. Protest that agency should have awarded contract to protester on a sole-source basis is dismissed as untimely where it is filed with the General Accounting Office more than 10 working days after the protester learns its agency-level protest on the same issue has been denied.
2. The General Accounting Office will not review a protest that the protester should have received a sole-source award.

DECISION

3M Company protests that Defense Logistic Agency (DLA) requests for proposals (RFP) Nos. DLA400-87-R-5158 and DLA400-88-R-3502, issued to procure reflective tape for the Navy, should be awarded to 3M on a sole-source basis.

We dismiss the protests.

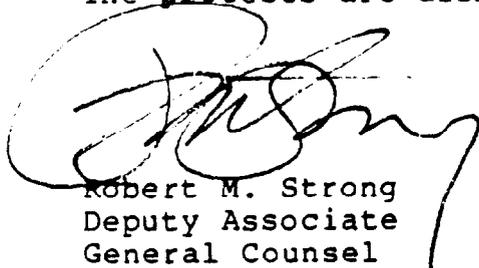
3M states that for the past 5 years it has been the only producer of the reflective tape for the Navy. According to 3M, however, in March of 1988 the Navy approved Reflexite as a source for the tape and the RFPs therefore invited offers of both 3M and Reflexite tape. 3M contends that there are not appropriate performance standards against which a new tape can be measured and that the Reflexite tape was not adequately tested to ensure that it would work properly during operational use. 3M concludes that it should receive the awards in the procurements on a sole-source basis until such time as adequate performance and testing standards are developed.

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By letters of May 2 and May 18, 1988, 3M protested to DLA on the same grounds raised in the protests to our Office. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1988), where a protest first has been timely filed^{1/} with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive notice of initial adverse agency action on that protest. From the record 3M submitted with its protests, it is apparent that 3M received the agency's denial of its protests on June 5, and 3M therefore was required to protest here by June 17. Since we did not receive the protests until June 27, they are untimely. Tate Engineering, Inc., B-227600, July 28, 1987, 87-2 CPD ¶ 104.

In any event, the purpose of our role in resolving bid protests is to ensure that the statutory requirement for full and open competition in the award of government contracts is met. We therefore would not consider 3M's protest that it should have received a sole-source award. Excell, Inc.--Request for Reconsideration, B-228304.2, Oct. 19, 1987, 87-2 CPD ¶ 374. Nor would we consider 3M's challenge to the adequacy of the Navy's testing of Reflexite's tape. Procuring officials and user activities are responsible for determining their minimum needs and whether an item will satisfy those needs, since the agency will suffer the consequences of problems encountered during performance. The agency's responsibility in this regard includes establishing procedures necessary to determine product acceptability. Rhine Air, B-226907, July 29, 1987, 87-2 CPD ¶ 110.

The protests are dismissed.



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^{1/} We note it is not even clear that the protest was timely with regard to RFP No. DLA400-87-R-5158, since DLA has informed us that proposals were due on May 2, the date of the first protest letter, and it appears from DLA records that the agency did not receive the letter until the following day. See 4 C.F.R. § 21.2(a)(1), which requires that protest of an alleged solicitation impropriety be filed before the proposal due date.