

Giddard



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Roanwell Corporation
File: B-235792
Date: July 20, 1989

DIGEST

Protest is untimely where filed 1 month after protester received notice of award and agency's statement that, in accordance with the solicitation, alternate items could not be considered. Fact that protester received later information relating to the agency's justification for limiting competition does not toll the time for filing the protest.

DECISION

Roanwell Corporation protests the award of a contract to David Clark Company under request for proposal (RFP) No. DLA 900-89-C-0632, issued by the Defense Electronics Supply Center, Defense Logistics Agency (DLA), for 10,000 microphone headsets. Roanwell contends that it offered a product which would meet the agency's needs and that DLA failed to consider its offer.

We dismiss the protest.

The RFP, issued on January 11, 1989, stated that offers were limited to a David Clark Company product which had current approval. Roanwell submitted an offer for its own model product and subsequently DLA requested and received a microphone headset sample from Roanwell.

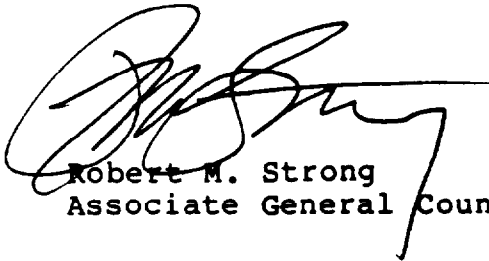
On May 5, Roanwell received notice from DLA of award to David Clark. This notice informed Roanwell that its offer was not eligible for award since the RFP did not provide for submission of proposals offering alternate items because the agency was presently not able to evaluate such items. On May 5, Roanwell notified the contracting officer that it intended to file a protest, but it awaited the receipt of information from DLA on May 30 before filing its protest with our Office on June 6.

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Roanwell contends that its protest is timely because the later information which it received from DLA gave Roanwell its basis for protest. The particular information received on May 30, which Roanwell states provided its basis for protest was DLA's finding in its justification for other than full and open competition that the anticipated cost to the government was determined to be fair and reasonable based on an analysis of submitted cost data. The justification also stated that a market survey was not conducted because alternatives cannot be evaluated.

Under our Bid Protest Regulations, protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). The expression of an intent to protest an award is not the same as actually filing a protest. On May 5 Roanwell knew that award had been made and that its proposal was not considered because the RFP did not provide for submission of proposals offering alternate items. The information Roanwell later received on May 30 added nothing further to Roanwell's knowledge of its basis of protest but merely indicated the underlying justification for DLA's reason for limiting competition. Advanced Marine Enterprises, Inc., B-196252.2, Feb. 7, 1980, 80-1 CPD ¶ 106. Accordingly, Roanwell's protest filed here 1 month after it knew of its basis of protest is untimely.

The protest is dismissed.



Robert M. Strong
Associate General Counsel