



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Altantic Marine, Inc.

File: B-239119.2

Date: April 25, 1990

Edward P. Doherty, for the protester.
Keith M. Dunn, Esq., and Catherine Rubino, Esq., Department of the Navy, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against rejection of proposal and exclusion from competitive range is untimely and not for consideration when not filed within 10 working days after protester received letter detailing specific bases for rejection of the proposal; under such circumstances, request for debriefing did not toll running of 10-day timeliness period.

DECISION

Atlantic Marine, Inc., protests the rejection of its proposal as technically unacceptable and the exclusion of its proposal from the competitive range, under request for proposals (RFP) No. N00024-89-R-2099(Q), issued by the Department of the Navy for a coastal patrol boat.

The Navy contends that the protest was not timely filed with our Office. We agree and dismiss the protest as untimely.

After completion of the evaluation of initial proposals, the agency notified Atlantic of the rejection of the firm's proposal for failure to meet mandatory RFP requirements; in its letter dated February 22, 1990, received by Atlantic on February 28, the agency specifically notified the firm that its proposed craft would not "achieve the required speed of 35 knots, minimum range of 2,000 nautical miles, and stability criteria for survival through sea state 5." Subsequently, on March 8, Atlantic requested a debriefing. By letter of March 15, the agency notified the protester

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that the requested debriefing could not be held until after contract award, pursuant to Federal Acquisition Regulation § 15.1003. Thereafter, on April 5, Atlantic filed this protest with our Office.

Under our Bid Protest Regulations, protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier; a protest not filed within this period will be dismissed as untimely. 4 C.F.R. § 21.2(a)(2) (1989). If an offeror is provided a specific basis for proposal rejection, a protest of the rejection must be filed within 10 days thereafter; under such circumstances, we will not permit a delay in filing the protest pending a debriefing. ANEFECO, Inc., B-225502, Mar. 18, 1987, 87-1 CPD ¶ 304; Southwestern Bell Co., et al., B-200523.3, et al., Mar. 5, 1982, 82-1 CPD ¶ 203. The Navy's February 20 letter informed Atlantic of the rejection of its proposal, and set forth the several specific, mandatory requirements which it failed to meet, for instance, the speed requirement. Atlantic did not file its protest with our Office until April 5, 26 days after its receipt of the notice of rejection; therefore its protest is untimely and will not be considered.

Atlantic contends that, although it did not file its protest within 10 days after receiving the Navy's rejection letter, this was because a technical debriefing was necessary for it to develop its detailed bases of protest; specifically Atlantic argues it needed to know the agency's reasons for concluding that its proposed craft did not meet the cited mandatory requirements. We disagree.

While Atlantic may have needed more specific information to effectively rebut the Navy's determination, such information clearly was not necessary to raise its challenge to that determination in the first place; rather, it is Atlantic's disagreement with the Navy's determination that gave rise to its protest. Thus, for example, to the extent Atlantic disagreed with the Navy's determination that its boat did not meet the speed requirement, it was required to protest the determination itself; the Navy's calculations and other reasons for reaching its determination would be relevant to considering whether the Navy's determination was correct, but it was not information necessary for Atlantic to realize it had a fundamental disagreement with the agency over its

determination. Our procedures provide ample opportunity for a protester to rebut an agency's reasons for its actions after submission of the agency report on the protest.
4 C.F.R. § 21.3(k).1/

The protest is dismissed.



Ronald Berger
Associate General Counsel

1/ We note that this was not a situation where the information available left uncertain whether a basis of protest existed, as, for example, when a protester is notified only of its proposal's rejection and not the deficiency on which the rejection was based; in that situation, a protester may await a formal debriefing before filing its protest. See ANEFCO, B-225502, supra. Here, since Atlantic was on notice of its protest grounds from the agency's rejection letter, its debriefing request did not toll the running of the timeliness period.