



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Lambrecht & Sons Inc.

**File:** B-240193

**Date:** August 1, 1990

Kenneth Lambrecht, for the protester.  
Captain Richard A. Hutto, Esq., Staff Judge Advocate,  
Department of the Army, for the agency.  
C. Douglas McArthur, Esq., and Michael R. Golden, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

A protester is presumed to be aware that an agency decision to request revised proposals may work to its competitive disadvantage, and thus may not delay filing its protest against such a request until the release of prices after award, but must protest the decision no later than the closing date for receipt of revised proposals.

### DECISION

Lambrecht & Sons Inc. protests the award of a contract under request for proposals (RFP) No. DABT19-90-R-0010, issued by the Department of the Army for interior painting and miscellaneous repairs to family housing at Ft. Leavenworth, Kansas. The protester believes that the agency discriminated against it and treated it unfairly by not accepting its initial offer under the RFP, which was the lowest received, and instead requesting best and final offers (BAFOs), which allowed the awardee to submit a price lower than the protester's.

We dismiss the protest as untimely.

The RFP was issued on February 2, 1990. Seven offers were received by the closing date of March 21. Four proposals, including Lambrecht's and Winston Corporation's, were found to be within the competitive range. Lambrecht's offer was low. Discussions were held and BAFOs were requested by April 25. The agency advised Lambrecht on June 8 that it had awarded a contract to Winston and advised Lambrecht of the contract price. Lambrecht requested contract

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information under the Freedom of Information Act on that same day. On June 18, Lambrecht received a response to its Freedom of Information Act request. This information showed that the protester's initial offer under the RFP was lower than the awardee's had been. On June 25, Lambrecht filed this protest with our Office.

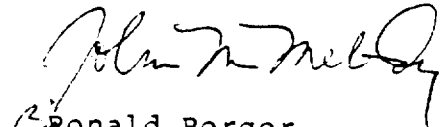
In its protest, Lambrecht submits evidence that the agency has in the past made award for similar services based on initial offers received; since the protester's initial offer under the RFP was lower than these prices previously accepted for similar services, the protester believes that it was unfair to allow other offerors to submit revised prices that displaced the protester as the low offeror. The protester contends that the request for revised proposals created an illegal auction encouraging the awardee to underbid the protester.

Under our Bid Protest Regulations, 4 C.F.R. §§ 21.2(a)(1) and (2) (1990), protests based upon alleged improprieties which are incorporated into a solicitation must be filed no later than the next closing date for receipt of proposals following incorporation; in other cases, 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. See Helitune, Inc., B-235527, June 23, 1989, 89-1 CPD ¶ 598. Lambrecht's protest against the request for BAFOs should therefore have been filed no later than April 25, the date set for receipt of BAFOs. To the extent Lambrecht protests the award based on revised offers at a price higher than Lambrecht's initial offer, its protest is also untimely since the protester concedes that it knew of the award based on a lower priced offer on June 8, and our Office received the protest, dated June 18, on June 25, more than 10 working days after June 8. (A protest is not deemed to be filed until it is received by our Office. 4 C.F.R. § 21.0(g)).

The protester apparently contends that it knew of no ground for protest until June 18, when it learned that its initial offer was the lowest received. However, in responding to a request for BAFOs, an offeror should be aware of the possibility that, based on revised proposals, the award decision may be different than the one which might have been made based on initial offers. By submitting a revised offer

without protest, the protester assumed the risk of this occurring, and its subsequent discovery that this in fact occurred provides no independent basis for protest.

The protest is dismissed.

  
Ronald Berger  
Associate General Counsel