

Ahearn



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied-Signal, Inc.

File: B-240442

Date: September 18, 1990

James W. Soroka, Esq., Allied-Signal, Inc., for the protester.

Thomas M. Hillin, Esq., Defense Logistics Agency, 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 that agency violated protester's proprietary rights in technical data through solicitation release of competitor's drawing, allegedly containing protester's proprietary data, is dismissed as untimely where protester had constructive notice of agency's release of drawing through announcement of a previous solicitation for the same part in Commerce Business Daily more than 3 years before issuance of current solicitation.

DECISION

Allied-Signal, Inc. protests the award of any contract under request for proposals (RFP) No. DLA700-90-R-0938, issued by the Defense Logistics Agency (DLA) for quantities of a gear used aboard the P-3 aircraft. Allied-Signal contends that the solicitation improperly provides for release of a drawing of the part, which allegedly contains information proprietary to the firm.

We dismiss the protest as untimely filed.

The RFP, issued on April 12, 1990, required manufacture of the part in accordance with American Aerospace Corporation drawing No. D83-0101, with several additional specifications, and notified offerors of the availability of the

drawing.^{1/} Allied-Signal argues that the agency improperly disclosed American's drawing for competitive procurement purposes. According to the protester, the referenced drawing contains data proprietary to Allied-Signal that could not have been obtained by reverse engineering or any other lawful means.

DLA reports that the agency approved American's alternate offer for competitive procurement of the part in November 1985, after obtaining written assurance from the firm that the data in its drawing was legally obtained.^{2/} According to DLA, since there was no restrictive legend on the drawing, the government obtained unlimited rights therein, and therefore its use and release in connection with the solicitation here was proper. See Department of Defense Federal Acquisition Regulation Supplement § 227.473-3(c). The agency further maintains that, in any case, the protest is untimely. Accordingly to the agency, Allied-Signal knew or should have known of the basis of its protest more than 3 years ago when, subsequent to the approval of American's drawing, the drawing was used to competitively purchase and award a contract for the same part. A synopsis of the solicitation specifying procurement of the same part in accordance with the American drawing was published in the Commerce Business Daily (CBD) on January 14, 1987; notice of award under the same solicitation, to Chardam Gear Company, was published in the CBD on June 29, 1987.

We agree with the agency that Allied-Signal's protest of the release of American's drawing, allegedly containing Allied-Signal's proprietary data, is untimely. Our Bid Protest

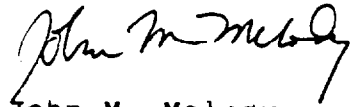
^{1/} Allied-Signal protested the terms of the RFP to the agency prior to the original May 11 closing date, and subsequently protested to our Office on July 17. Thereafter, on July 24, the agency denied the firm's agency-level protest.

^{2/} Prior to this approval, American submitted an alternate offer on the part in 1983; however, it was not approved at that time because of three dimensional errors on the firm's drawing. During the process of the 1985 approval, the agency's records indicate, American resubmitted its 1983 drawing with corrections after the agency identified what the erroneous dimensions were, but did not disclose what the correct dimensions should be. The agency then compared American's drawing to an actual part from stock and approved the firm as an alternate source.

Regulations require that protests be filed within 10 working days of when the protester knew or should have known of the basis for its protest, 4 C.F.R. § 21.2(a)(2) (1990); publication in the CBD constitutes constructive notice of procurement actions. Dixie Air Parts Supply, Inc., B-230088, Apr. 11, 1988, 88-1 CPD ¶ 355. The record establishes that any disclosure of Allied-Signal's proprietary data would have occurred prior to the solicitation of the same part in accordance with American's drawing under the 1987 procurement. Thus, when the solicitation was announced in the January 14, 1987 CBD, placing Allied-Signal on constructive notice that the American drawing was available for release, Allied-Signal should have known then of any alleged improper disclosure of its proprietary data. Allied-Signal did not protest at that time, however, and its protest now, more than 3 years later, is untimely. See Allied-Signal, Inc., B-239170, B-239921, July 17, 1990, 90-2 CPD ¶ 47.

The protester has requested that we hold a conference on this matter. Because it is clear, however, that the protest is not for consideration, a conference would serve no useful purpose. Defense Research Inc., B-225515, Jan. 6, 1987, 87-1 CPD ¶ 18.

The protest is dismissed.



John M. Melody
Assistant General Counsel