



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DARE Electronics, Inc.

File: B-241838

Date: February 11, 1991

Terence L. Fague, Esq., Coolidge, Wall, Womsley & Lombard, for the protester.

Charles J. Roedersheimer, Esq., Defense Logistics Agency, for the agency.

Stephen J. Gary, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegations that agency improperly excluded protester from competitive range, denied protester opportunity for discussions, improperly allowed awardee to extend its offer, and did not promptly notify protester of ineligibility for award, are dismissed as untimely where raised more than 10 days after receipt of award notice, which should have made protester aware of any basis for allegations.

2. Protest that award document included requirement impossible to perform is dismissed, since it concerns matters of responsibility or contract administration, which General Accounting Office does not review.

DECISION

DARE Electronics, Inc. protests the award of a contract to Pragmatronics, Inc. under request for proposals (RFP) No. DLA900-89-R-1496, issued by the Defense Electronics Supply Center (DESC) for 220 electronic choppers. DARE asserts that DESC acted improperly in excluding the protester from the competitive range, allowing the awardee to extend its expired offer, and making an award for an obviously impossible requirement.

We dismiss the protest.

The RFP, which stated that award would be made to the lowest priced responsive (i.e., technically acceptable), responsible offeror, was issued in August 1989. By the closing date of October 31, the agency had received two offers, Pragmatronics' and DARE's, which, in accord with the RFP, were to remain open for 60 days. Pragmatronics' offer was priced at \$429 each,

and DARE's at \$1,451 each. In view of this considerable price discrepancy (the difference in total price was \$224,974), the contracting officer determined that DARE did not have a reasonable chance of receiving the award even if discussions were held with the firm, and consequently rejected its proposal as outside of the competitive range. At the request of the agency, Pragmatronics agreed to extend its original offer until August 17, 1990; on that date, DESC awarded the contract to the firm. DARE first learned of the award in a notice to unsuccessful offerors that it received on September 6. It protested the award to our Office on October 25.

DARE asserts that it was improperly and arbitrarily excluded from the competition, denied an opportunity for discussions, and was not notified at the earliest practicable time that its proposal was no longer eligible for award; DARE notes in this latter regard that, while the award was made on August 17, it did not receive notice that it was an unsuccessful offeror until September 6. In addition, DARE asserts that DESC violated Federal Acquisition Regulation (FAR) § 14.404-1(b), which requires the contracting officer to obtain extensions of offer acceptance periods before the expiration of offers when he is aware that he will be unable to make the award within the acceptance period. DARE also contends that the contract awarded to Pragmatronics contains a requirement that is patently impossible to perform.

All of the protest issues but one are untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), protests other than those concerning alleged improprieties in a solicitation must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. Here, based on receipt of the award notice alone, the protester knew or should have known of the basis for its allegations that it had not been afforded the opportunity for discussions; that it had not received timely notice of its ineligibility for the award; and, since it knew that the original period for acceptance of offers had long ago expired, that the award to Pragmatronics must have involved an extension of the original acceptance period. Consequently, DARE was required to protest these matters within 10 days of receipt of the award notice. As the firm's protest was not received until more than 1 1/2 months after its receipt of the award notice on September 6, these aspects of the protest are untimely and will not be considered.

DARE asserts that its protest is timely because, even though it learned of the award on September 6, it did not receive a response to its Freedom of Information Act (FOIA) request concerning the procurement until October 12, and its protest is based on information contained in the FOIA documents. DARE

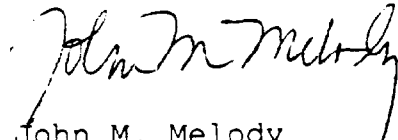
is incorrect as to the arguments discussed above; again, all of those arguments should have become apparent to DARE as soon as it learned of the August 17 award on September 6. For example, it followed from the fact that award had been made that DARE had not been included in any discussions. FOIA information thus was not necessary to raise an argument that discussions should have been conducted with the firm.

The only aspect of the protest that is timely is the allegation that the award document to Pragmatronics--which the protester received in response to its FOIA request--states a requirement that is impossible of performance. Specifically, DARE asserts that, while the solicitation requires that the contractor provide first article samples and the FAT report within 150 days of award, the award document states that FAT delivery is required 60 days after award, and the FAT report, 120 days after award. According to the protester, the service life test required for FAT cannot be performed within the timeframe specified in the award document. Whether or not Pragmatronics can or will meet the government's needs under the solicitation, however, are matters of the offeror's responsibility or of contract administration, neither of which is subject to our review under the circumstances here.

4 C.F.R. § 21.3(m) (1) and (5); see American Instrument Corp., B-239997, Oct. 12, 1990, 90-2 CPD ¶ 287; Automated Power Sys., Inc., B-224203, Feb. 4, 1987, 87-1 CPD ¶ 109.

Accordingly, this aspect of the protest also will not be considered.

The protest is dismissed.



John M. Melody
Assistant General Counsel