



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Advanced Seal Technology, Inc.

**File:** B-242236

**Date:** March 7, 1991

James P. Rome, Esq., Rome & Associates Ltd., for the protester.

Terry E. Miller, Esq., and Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for John Crane, Inc., an interested party.

John P. Patkus, Esq., and Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.

Sabina K. Cooper, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest is dismissed as untimely where the protester filed its initial agency-level protest more than 10 working days after the agency informed the protester that its offer was technically unacceptable, and the protester waited more than a year to receive the contracting agency's final response to its agency-level protest before filing its protest at the General Accounting Office.

### DECISION

Advanced Seal Technology, Inc. (AST) protests the award of a contract to John Crane, Inc. under request for proposals (RFP) No. DLA500-89-R-0386, issued by the Defense Logistics Agency, Defense Industrial Supply Center (DISC), for a mechanical seal assembly used on centrifugal pumps in submarine seawater systems. AST principally argues that DISC's rejection of its alternate offer as technically unacceptable was unreasonable.

We dismiss the protest as untimely.

The RFP was issued on April 17, 1989, to procure 80 seal assemblies (National Stock Number (NSN) 5330-01-166-3601) described as "Seal, Critical Pump Part, John Crane-Houdaille Inc. . . . P/N CF-SP-76724 . . . ." The RFP included the standard "Products Offered" clause that permitted firms to offer alternate products that were either "identical to or physically, mechanically, electronically and functionally interchangeable with" the named product. The products offered clause defined "exact product" as the identical product cited

in the RFP's procurement identification description (PID), manufactured either by the manufacturer cited in the PID, or by a firm which manufactures the product for the manufacturer. An "alternate product" was defined as any other product even if manufactured in accordance with the drawings and specifications of the manufacturer listed in the PID.

Offerors of alternate products were advised that they were required to submit legible copies of all drawings, specifications or other data necessary to describe clearly the characteristics and features of the product being offered, as well as drawings and other data covering the design, materials, etc., of the exact product, to enable the government to determine whether the offeror's product is equal to the product cited in the PID. Offerors were cautioned that the failure to furnish the complete data necessary to establish acceptability of the product offered might preclude consideration of the offer.

DISC received six offers by the August 7 closing date. AST submitted an offer of an alternate product at a unit price of \$550 for 80 units and a unit price of \$525 for 100 or more units. Crane was the second low offeror at \$740.25. AST's offer was accompanied by a letter stating that its alternate product was awaiting approval by the Naval Sea Systems Command (NAVSEA), the agency with engineering cognizance of this critical application item, and a technical data package.

On September 7, DISC determined that AST's alternate offer was still under evaluation by NAVSEA with no estimated completion date. DISC then informed AST by postcard dated September 20 that its offer was technically unacceptable and that award would be made to Crane, the low technically acceptable offeror, for 135 items. By letter of October 12, DISC confirmed to AST that its offer was still under evaluation by NAVSEA Pump Life Cycle Management.

AST protested to the agency on October 18, before award had been made to Crane, contending that this was the fourth time since May 1986 that AST had received the response from DISC that its technical data package for this item was under evaluation by NAVSEA. DISC responded on November 8, stating that it would contact NAVSEA to determine the reason that evaluation of AST's technical data package had been delayed and would notify AST when a reply had been received.

Exactly 1 year later, on November 8, 1990, DISC determined that it was in the government's best interest to award a contract to Crane since the supplies had become urgently required. Accordingly, DISC made award on November 21 and notified AST of its decision on November 27. AST filed a protest in our Office on December 4, asserting that DISC's


determination of technical unacceptability was unreasonable, that the increase in item quantity prejudiced AST, and that the award to Crane did not render AST's protest moot.

Our Bid Protest Regulations require that protests not based on alleged solicitation improprieties be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1990). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely under our Regulations, AST's agency-level protest would have to have been filed within 10 working days after it learned of the basis for protest.

AST was notified by postcard dated September 20, 1989, that its offer was technically unacceptable and that DISC intended to make award to Crane. However, AST did not protest in writing to DISC until October 18, more than 10 working days after notification of rejection of its offer. Moreover, although DISC told AST on November 8 that it would contact NAVSEA to determine the reason that evaluation of AST's technical data package had been delayed, AST did not protest DISC's finding of technical unacceptability to our Office until December 4, 1990, more than a year after filing its initial agency protest. See Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

Indeed, even if AST's agency-level protest had been timely, when a protest has been filed with the contracting agency, the protester is not permitted to delay filing a subsequent protest with our Office until it eventually receives a final decision on the merits from the agency. The protester may wait only a reasonable length of time for an agency's response before filing a protest here. We have held that when a protest is filed with an agency and more than 4 months elapses without any response, a subsequent protest to our Office is untimely because the protester did not diligently pursue the protest. East West Research, Inc., B-236515, Nov. 30, 1989, 89-2 CPD ¶ 510. Here, more than a year elapsed between the time AST filed its agency-level protest and the time AST filed its protest here. Under these circumstances, AST's protest would be untimely due to a lack of diligent pursuit, even if its agency-level protest had been timely.

The protest is dismissed.

  
Christine S. Melody  
Assistant General Counsel