



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Shutterbug Shop, Inc.

File: B-249115.2

Date: September 22, 1992

David Roche for the protester,
Clayton S. Marsh, Esq., Ropes & Gray, for MIL Corporation,
an interested party,
Gregory T. Einboden, Esq., and Daniel A. Laquaite, Esq.,
Department of the Navy, for the agency,
Glenn G. Wolcott, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging agency's exclusion of proposal from the competitive range, filed 6 months after agency notified firm that its proposal had been found technically unacceptable and advised protester of the bases for exclusion, is untimely; agency's subsequent letter which mistakenly indicated that protester's proposal had been found technically acceptable does not create a new basis to protest the proposal's exclusion.

DECISION

The Shutterbug Shop, Inc. protests the exclusion of its proposal from the competitive range in a procurement conducted by the Department of the Navy under request for proposals (RFP) No. N00421-91-R-0047. Shutterbug's proposal was excluded from the competition following the Navy's initial evaluation of proposals in which Shutterbug's proposal was found technically unacceptable. Shutterbug questions the bases for the Navy's determination that its proposal was technically unacceptable.

We dismiss the protest.

On September 3, 1991, the Naval Air Test Center, Patuxent River, Maryland, issued this RFP seeking proposals to provide photographic support services for a base period with four 1-year option periods. Section M of the RFP identified

five technical evaluation factors and provided that award would be made to the offeror submitting the low cost, technically acceptable proposal.¹

By the October 11 closing date, the Navy received six proposals including one from Shutterbug. After evaluating the proposals, the Navy determined that Shutterbug's proposal was technically unacceptable and not susceptible to being made technically acceptable. Among other things, the agency determined that Shutterbug had failed to propose an adequate number of qualified personnel and that its technical approach failed to demonstrate an understanding of the agency's needs. As a result, by letter dated December 18, 1991, the Navy notified Shutterbug that its proposal was excluded from the competitive range, and specifically advised Shutterbug of the various deficiencies in the proposal.

Thereafter, the Navy sought best and final offers from the competitive range offerors.² On June 8, 1992, the Navy awarded a contract to MIL Corporation on the basis that it had submitted the low cost, technically acceptable proposal. By letters dated June 8, the Navy advised all offerors of the award. In the letters to the unsuccessful, competitive range offerors, the agency noted that, although their proposals had been technically acceptable, they had not submitted the low cost proposal. In the June 8 letter sent to Shutterbug notifying it of the award, the agency inadvertently and mistakenly stated that Shutterbug's proposal had also been technically acceptable.

On June 18, 1992, Shutterbug filed a protest with our Office challenging the Navy's exclusion of its proposal from the competitive range. Shutterbug argues that because the June 8 letter stated that its proposal was technically acceptable, the prior letter of December 18, 1991, advising Shutterbug of the bases for exclusion from the competitive range is "null and void." Shutterbug goes on to challenge the substance of the Navy's prior evaluation of its proposal and the determination that its proposal was technically unacceptable.

¹The five technical evaluation factors were: technical approach, personnel, management approach, corporate experience, and sample products.

²One other proposal was found technically unacceptable; the competitive range consisted of the four remaining offerors.

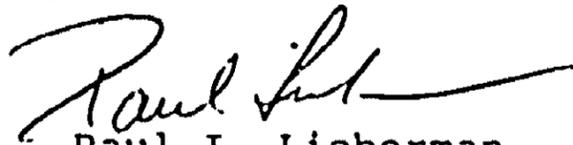
The agency has submitted affidavits from the contracting officer and the contracting specialist for this procurement stating that the Navy mistakenly advised Shutterbug in the June 8 letter that its proposal was technically acceptable. The affidavits state that Shutterbug's initial proposal was evaluated as technically unacceptable in December 1991, and that the agency took no further action regarding the proposal. The agency further points out that Shutterbug was notified that its proposal had been excluded from the competitive range and advised of the specific bases for that action in the letter dated December 18, 1991; nonetheless, Shutterbug waited 6 months to file its protest against this exclusion with our Office.

Shutterbug does not dispute the Navy's factual assertions. Rather, Shutterbug appears to be arguing that the Navy's mistaken reference to Shutterbug's proposal as technically acceptable in the June 8 letter created a new period for filing its protest.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests challenging adverse agency actions must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest. 4 C.F.R. § 21.2(a)(2) (1992). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air, Inc.-- Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

On this record, it is clear that Shutterbug's proposal was excluded from the competitive range as technically unacceptable; Shutterbug was advised in December 1991 of the bases for this action; and Shutterbug failed to protest that action until June 1992. The Navy's mistake in advising Shutterbug that its proposal was technically acceptable does not create a new period for filing a protest. Since Shutterbug's basis for protest emanates from information which it received in December 1991 and does not arise from any agency action which Shutterbug learned of within 10 days prior to filing its protest, its protest is untimely. 4 C.F.R. § 21.2(a)(2).

The protest is dismissed.



Paul I. Lieberman
Assistant General Counsel