



Comptroller General  
of the United States

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Washington, D.C. 20548

# Decision

**Matter of:** Electrodyne Systems Corporation

**File:** B-257635

**Date:** July 6, 1994

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## DECISION

Electrodyne Systems Corporation protests the terms of request for proposals (RFP) No. N00174-94-R-0014, issued by the Naval Surface Warfare Center, Department of the Navy, for power supply systems.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing date for submission of proposals.

The RFP, issued on March 27, 1994, with a closing date for receipt of initial proposals of April 25, solicited proposals for a quantity of power supply assemblies manufactured by PowerCube Corporation. The RFP stated in a number of places that the supply of the brand name item was mandatory and specified that "proposals offering parts of other than the supplier referenced will be rejected." The solicitation also incorporated by reference Federal Acquisition Regulation (FAR) § 52.214-6, which provides that oral explanations or instructions given before the award of a contract are not binding.

According to the protester, one of its representatives contacted the agency by telephone on April 22, and stated that a specific power supply system manufactured by Electrodyne met all of the salient characteristics of the PowerCube product and that Electrodyne had in fact successfully delivered its product to the agency under a solicitation issued in 1993. The protester claims that the cognizant agency personnel responded that its "offer would be given consideration."

Electrodyne submitted its proposal offering power supply systems of its own manufacture. Electrodyne included in its proposal drawings and specifications which, according to the protester, demonstrate that its product meets the salient characteristics of the PowerCube product specified as mandatory in the RFP. Electrodyne also submitted a letter with its proposal stating that Electrodyne wished "to

compete for these supplies per the subject solicitation, and . . . feel[s] that Brand Name Mandatory is not competitive and is unnecessary since we have already delivered this item to the government." By letter dated June 8, Electrodyne was informed that its proposal had "been determined unacceptable as this was a Brand Name Mandatory procurement and [Electrodyne] proposed other than the brand name," and that the contract had been awarded to PowerCube.

Electrodyne contends that the RFP is unduly restrictive of competition because it was issued on a brand name mandatory basis, such that only a specific model manufactured by PowerCube Corporation was acceptable.

Electrodyne's protest challenging the terms of the RFP, filed with our Office on June 22--nearly 2 months after the closing date for receipt of initial proposals and after the contract had been awarded--is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a) (1) (1994); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Our Regulations include a timeliness requirement for protests based upon alleged solicitation improprieties to serve an important purpose--to enable the contracting agency or our Office to decide an issue while it is most practicable to take effective action where the circumstances warrant. GM Plastics, Inc., B-235083, Apr. 24, 1989, 89-1 CPD ¶ 405. A protest of an alleged defect in a solicitation filed after the closing date and, in this case, after the contract has been awarded, defeats this purpose.

Electrodyne asserts that its protest should nevertheless be considered timely because it orally challenged the terms of the RFP during its April 22 telephone conversation with agency personnel. Electrodyne's telephone conversation of April 22 with agency personnel cannot be considered an agency-level protest, as such protests are required to be in writing. FAR § 33.101; Digital Techs., Inc., B-243795, May 31, 1991, 91-1 CPD ¶ 520. Further, to the extent that the protester suggests that its reliance on the agency's oral advice of April 22 preserved its rights to have a subsequently filed protest considered by our Office, Electrodyne's reliance on erroneous oral advice does not excuse its untimely filing. See MKB Constructors, J.V., B-255278, Jan. 31, 1994, 94-1 CPD ¶ 55. Indeed, where, as here, a solicitation expressly cautions offerors against relying upon oral advice from agency personnel, offerors who ignore the admonition, and rely upon alleged erroneous advice which conflicts with specific language in the solicitation, must suffer the consequences. Consolidated Bell, Inc., B-228492, Feb. 19, 1988, 88-1 CPD ¶ 169. Thus,

even if Electrodyne was misled to its detriment by the alleged oral advice from agency personnel on April 22 that Electrodyne's offer "would be given consideration," such alleged erroneous advice neither binds the agency nor requires the submission of new offers. Id.

Furthermore, we note that the letter submitted by Electrodyne with its proposal, which the protester asserts challenged the terms of the solicitation, cannot be considered a timely pre-closing date protest to the agency, because there is no requirement that an agency open or read proposals on or before the closing date, when a protest of this type must be filed. Tower Corp., B-254761.3, Mar. 8, 1994, 94-1 CPD ¶ 186.

Electrodyne finally requests that its protest be considered under the significant issue exception to our timeliness rules, 4 C.F.R. § 21.2(c). We decline to do so. In order to prevent the timeliness rules from becoming meaningless, exceptions are strictly construed and rarely used. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community which have not been considered on the merits by this Office in a previous decision. Herman Miller, Inc., B-237550, Nov. 7, 1989, 89-2 CPD ¶ 445. Electrodyne's protest, concerning whether a particular solicitation was unduly restrictive of competition because it was issued on a brand name mandatory basis, does not fall under this standard because the issue raised relates only to this specific procurement action and does not have widespread significance to the procurement community. ILC Dover, Inc., B-244389, Aug. 22, 1991, 91-2 CPD ¶ 188.

The protest is dismissed.



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