



Comptroller General
of the United States

1101143

Washington, D.C. 20548

Decision

Matter of: Data-Prompt, Inc.

File: B-259193

Date: March 14, 1995

DECISION

Data-Prompt, Inc. protests the Department of Housing and Urban Development's (HUD) authorizing Martin Marietta Technologies, Inc., to procure a software package under contract No. HC-14703. Data-Prompt contends essentially that the agency is having Martin Marietta perform work that is outside the scope of the contract and thus improperly circumventing the requirement for full and open competition.

We dismiss the protest as untimely filed.

On November 28, 1990, HUD awarded contract No. HC-14703 to Martin Marietta for HUD's integrated information processing service (HIIPS), including computer and telecommunications hardware and software, support, and other related goods and services. On February 24, 1994, the agency authorized Martin Marietta under the HIIPS contract to provide and support a property disposition system (PDS), which was to utilize commercial, off-the-shelf software tailored to HUD's unique requirements.

Data-Prompt--the incumbent contractor responsible for the system that is being replaced by the PDS--contends that the software being procured is not commercially available and cannot perform the PDS functions without extensive development. Data-Prompt views the development of software as outside the scope of the HIIPS contract and, therefore, it contends that the PDS effort was required to be separately competed.

In its comments on the agency report, the protester submitted an affidavit from its project director which stated that he learned on April 13, 1994, that HUD would be acquiring through Martin Marietta a particular software package, the identity of which was disclosed to Data-Prompt at that time, and using it for the PDS work. The protester alleged in its comments that this particular software

package could not be used for the PDS work without significant developmental work which would cost "many millions of dollars." Data-Prompt's project director stated that, on September 30, 1994, he reviewed a copy of the statement of work that HUD had issued pursuant to the terms of the February 24 authorization letter describing the software package and work required for the PDS effort. The protester's project director also stated that the statement of work included many references to development (in contrast to the purchase of an existing software package) and indicated that the contract work included development effort. The protester cited the statement of work in its initial protest submission to support its allegations, arguing that certain terms in the statement of work are inconsistent with a commercial, off-the-shelf product.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests other than those based upon alleged solicitation improprieties must be filed no later than 10 working days after the protest: knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). The 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.

Data-Prompt should have known its basis for protest--HUD's alleged use of the HIIPS contract to have software developed for the PDS system--when it learned in April, 1994, which software package Martin Marietta would be providing to HUD for the PDS. Data-Prompt presumably was of the view then (as it was at the time it filed its protest) that using that software package would entail a substantial developmental effort. At the latest, the protester knew its protest ground when its program manager reviewed the statement of work on September 30, since Data-Prompt's project manager asserted that the statement of work indicated that the authorized work would include significant developmental work on the software package. Because the protest was not filed until November 2, more than a month after Data-Prompt reviewed the statement of work, the protest is untimely.

The protest is dismissed.



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Acting Assistant General Counsel