



Comptroller General
of the United States

1059115

Washington, D.C. 20548

Decision

Matter of: Korrekt Optical

File: B-261229

Date: May 11, 1995

DECISION

Korrekt Optical protests its elimination from the competitive range under request for proposals (RFP) No. SPO200-94-R-4159, issued by the Defense Personnel Support Center for plastic ophthalmic lenses. Korrekt contends that the agency failed to conduct meaningful discussions prior to rejection of its offer and that the agency's rejection of the offer usurped the functions of the Small Business Administration relative to determining the responsibility of small businesses.

We dismiss the protest as untimely because it was filed more than 10 days after the protester knew, or should have known, of the basis for its protest.

The agency advised the protester by letter dated March 14, 1995 that its proposal had been determined to be outside the competitive range. The letter stated that Korrekt's proposal had been found deficient under each of the four technical evaluation factors in the RFP--technical/quality capability; electronic data interchange experience; product demonstration models; and production management/corporate experience. By letter dated March 27 to the agency, the protester requested a copy of the "technical evaluation report." Subsequently, the agency advised Korrekt by letter dated April 20 that award had been made to another offeror. Korrekt filed its protest with our Office on April 27.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). Here, since the protest was not filed until April 27, more than 10 days after Korrekt received the agency's March 14 letter advising that its proposal had been rejected, the protest is untimely.

Korreck argues that its protest is timely because it was filed within 10 days of when it learned of award. However, it is clearly the rejection of the protester's proposal and not the award that here forms the basis for the protest. The information on which Korreck bases its protest was available to it upon receipt of the agency's March 14 letter; the subsequent award letter gave Korreck no additional information regarding its protest grounds.¹ Korreck therefore could not delay filing its protest until it received notice of award. See Aero Components Co. of Arlington, Inc.--Recon., B-243823.2, July 3, 1991, 91-2 CPD ¶ 21. Moreover, although the protester requested a copy of the technical evaluation report by letter of March 27, that letter constitutes neither a request for debriefing nor an agency-level protest such as to justify Korreck's delay in filing its protest with our Office.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

¹In its response to the agency's motion to dismiss the protest as untimely, Korreck asserts that it "has never received the information necessary, and cannot be said to have [been] placed on notice as to the 'basis' of its rejection." This assertion is inconsistent with Korreck's decision to file the protest; that is, filing of the protest indicates that Korreck in fact was sufficiently on notice from the March 14 letter of the basis for rejection of its proposal to file a challenge to the agency's action.