



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** MCA Research Corp.

**File:** B-262087

**Date:** August 14, 1995

### DECISION

MCA Research Corporation (MCA) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N62269-94-R-1321, issued by the Naval Air Warfare Center, Department of the Navy to obtain a quantity of Helicopter Emergency Egress Devices (HEED).<sup>1</sup> MCA contends that the agency failed to properly evaluate and test its HEED unit.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1995). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58.

These 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.--Request for 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.

The record shows that MCA learned that its HEED unit failed the original performance test on or about November 17, 1994, and timely protested to the agency on November 29. In response, the Navy granted MCA's request to retest its unit

<sup>1</sup>The HEED unit is used to provide emergency air supply for Navy aircrew members in the event of a water crash.

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using certain mutually agreeable test procedures. The agency retested MCA's HEED unit and again determined that the unit failed to meet the minimum requirements of the RFP. By letter dated February 21, 1995, the agency advised MCA that its unit failed the retest; consequently, MCA's proposal was rejected as technically unacceptable and not capable of being made acceptable without a design change to the HEED unit.

Thereafter, MCA filed a second agency protest dated March 3, as supplemented by letter of March 8. In that protest, among other allegations, MCA argued, as it does in its protest to this Office, that printed tests results provided to MCA by the Navy were not consistent with certain test results which it had observed "on-screen" during a site visit, and its HEED unit was not tested at the correct air pressure. The Navy denied this second agency-level protest in a letter dated May 1. This constituted "initial adverse agency action" that required MCA to protest to our Office within 10 working days of when it learned of the denial. However, MCA continued to pursue further consideration from the Navy, which resulted in further denials of its continuing protests on June 27.

The fact that MCA continued to pursue agency consideration of its protest grounds after the initial denial of its second agency-level protest does not toll our timeliness requirements; once informed of initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the matter with the agency. pH-logistics, Inc., B-244162, May 29, 1991, 91-1 CPD ¶ 515. Since MCA did not file its protest with our Office within 10 working days of the agency's May 1 denial of the agency-level protest, its protest to our Office filed on July 20, is untimely.

The protest is dismissed.



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