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**DECISION**

*J. Cole* *Pl 2*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-168225**

**DATE: October 5, 1977**

**MATTER OF: Plattsburgh Air Force Base Heating Plant**

**DIGEST:**

1. Protest to GAO against allegedly restrictive specifications in RFP, filed more than 10 working days after receipt of formal initial adverse agency action on protest to contracting agency, is untimely and will not be considered on merits.
2. RFP for heating plant rehabilitation required evidence of successful operation of control system for 2 years in similar size and capacity boiler plant with primary function of boiler and plant equipment control. Protest that awardee did not meet requirement because its experience concerned plant with "steam circulating" system rather than "high temperature hot water" system is denied, since contracting agency states that plants are of similar size and capacity, and that function of control system is comparable in both boiler systems, which is substantiated by trade publication.

Request for proposals (RFP) No. W30636-77-09004 was issued by the United States Air Force to furnish all labor, equipment, material, incidentals, and operations necessary for the rehabilitation of six high-temperature hot water generator/boilers at the central heating plant for Plattsburgh Air Force Base, New York. The project's major components were a burner system and a direct digital control system. The latter controls the combustion system which modulates fuel and air input to the boilers. The solicitation required in pertinent part:

**"PRIME CONTRACTOR**

"Award of the prime contract will be made only to the manufacturer of either the burner system or the control system. No award will be made to a general contractor who would subcontract both the major components.

\* \* \* \* \*

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"\* \* \* the contractor shall provide evidence of the Direct Digital Control System installation having successfully operated for two continuous years in a boiler plant of similar size and capacity where the primary function of the system is the control of boilers and boiler plant support equipment. \* \* \*"

Only one offer was received in response to the RFP, and award was made to that firm, a burner manufacturer.

Our Office has received a protest on behalf of a control system manufacturer that both of the requirements set out above unduly restrict competition. In addition, it is contended that the awardee did not meet the 2-year experience requirement regarding operation of a control system "in a boiler plant of similar size and capacity" to Plattsburgh's, on the basis that the control system offered involved a "steam circulating central heating system," whereas Plattsburgh has a "high temperature hot water central heating system."

Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1977) (Procedures), provides in part:

"\* \* \* If a protest has been filed with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] days of formal notification of \* \* \* initial adverse agency action will be considered \* \* \*."

The matter of restrictive specifications was initially raised with the Air Force prior to the closing date for receipt of initial proposals under the RFP, and the Air Force justified the requirements in a letter to the protester shortly thereafter. However, a bid protest was not filed in our Office until almost 2 months after that Air Force response. Accordingly, the protest to our Office against the subject specifications is untimely under section 20.2(a) of our Procedures and will not be considered on the merits.

In regard to the above, we note that the protester pursued the matter with the Air Force after receipt of its justification. However, while we realize that a protester may consider an agency's

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initial adverse action to be ill-founded or inadequately explained, leading the protester to seek reconsideration at the agency or other level, it is nevertheless obligatory that the protest be filed after notification of initial adverse agency action. Rowe Industries, B-185520, January 8, 1976, 76-1 CPD 13.

Concerning whether the awardee qualified under the RFP's control system experience requirement as set out above, the Air Force determined that it did even though the awardee's experience may have been in a steam boiler plant, because the plant was similar in size and capacity to Plattsburgh's, and the function of a direct digital control system is essentially the same in either type plant. In this connection, the Air Force has provided a Guide and Data Book published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, which states:

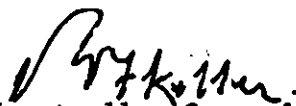
"High temperature water systems are basically similar to the conventional forced hot water heating systems. They require a heat source for heating the water, which may be direct-fired high temperature water generators [used at Plattsburgh], steam boilers, or heat exchangers of the open or closed type. \* \* \*

\* \* \* \* \*

"Where the high temperature water generators are direct-fired, the central stations [where they are located] are comparable to steam boiler plants operating within the same pressure range. \* \* \*"

In view thereof, we cannot state that the Air Force determination that the awardee met the subject requirement was improper.

The protest is denied.

  
Deputy Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*J. Cohen*  
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October 5, 1977

The Honorable John Brademas  
House of Representatives

Dear Mr. Brademas:

Enclosed is a copy of our decision of today concerning your bid protest under request for proposals (RFP) No. F30636-77-09004, issued by the United States Air Force for the rehabilitation of six high-temperature hot water generator/boilers at the central heating plant for Plattsburgh Air Force Base, New York.

As noted in the decision, we concluded that the awardee complied with the RFP's direct digital control system experience requirement, and we declined to consider on the merits the matter of allegedly unduly restrictive specifications, since your protest to our Office on that issue was not timely filed under our Bid Protest Procedures, 4 C.F.R. part 20. (1977) (Procedures).

Concerning the applicability of our Procedures to protests filed by or referred to our Office by Members of Congress, it has been decided that no protest will be considered on its merits if untimely filed, unless one of the exceptions in section 20.2(c), *infra*, is applicable regardless of the source of the protest. This policy was adopted because our Office can best function if it is permitted to decide an issue while it is still practicable to take effective action with respect to the procurement where the circumstances warrant. We are unable to do so if a protest is filed after what we consider to be a reasonable time for the filing of a protest. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress, this would suggest to the procurement community that the timeliness provisions of our Procedures could be circumvented by submitting the protest through a Member of Congress.

Section 20.2(c) of our Procedures provides that for good cause shown or where there are issues significant to procurement practices or procedures, our Office may consider any protest which is not timely filed. However, these exceptions are not involved here. See 52 Comp. Gen. 821 (1973). Therefore, the protest on restrictive specifications could not be considered on the merits.

Sincerely yours,

Deputy

*[Signature]*  
Comptroller General  
of the United States

Enclosure