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DECISION



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

FILE: B-193308

DATE: December 28, 1978

MATTER OF: Bauer Ordnance Company DLG00483

DIGEST:

[Protest Concerning Unacceptability of Technical Proposal]

1. Where agency, in notifying offeror of unacceptability of its proposal, also advises offeror of reasons for rejection of proposal, protest based on such rejection must be filed within 10 working days of receipt of such notice, rather than within 10 days of subsequent meeting with contracting officials, since grounds for protest were known upon receipt of advice initially furnished.
2. Where letter request for technical proposals provides for final determination of acceptability based solely on basis of revised proposal, protester should have known negotiations were closed as of closing date for receipt of proposals and no further revisions of proposals would be accepted.

Bauer Ordnance Company (Bauer) protests the Department of the Air Force's determination that its technical proposal, which was submitted under letter request for technical proposals AFD2060-78-3800 for a security police armored response/convoy vehicle, was unacceptable.

On September 29, 1978, Bauer received formal notification (message dated September 28, 1978) from the Air Force that its revised proposal had been determined unacceptable. The message stated:

- "A. It was not demonstrated that the purchase description (3.2.1) precluded compliance with Federal Motor Vehicle Safety Standard 571.302, flammability of interior materials.

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Although this point was brought to your attention earlier, it was not addressed in your second addendum to the technical proposal.

- "B. Driver vision capability (3.2.6) as stated in your second addendum was a result of tests on the prototype. Your prototype is not what you intend to supply us; therefore, the tests are invalid. Actual driver vision capability should have been depicted on the drawing.
- "C. We still question the convenience of the radios (3.4.3) to the driver. We question whether proposed modification of dash will interfere with the heating and air conditioning systems.
- "D. Reference paragraph 3.5.12.1.1 Insulation."

Upon receipt of that message, Bauer requested a meeting with contracting officials, which was held on October 12, 1978. At that time Bauer attempted to submit another revised proposal, which was not accepted by the Air Force. Bauer filed a protest with this Office on October 25, 1978.

The protest is untimely. Although generally a protester may reasonably withhold filing a protest with this Office until it has had a debriefing from the contracting agency to learn why its proposal was not considered for award, where a potential protester has been sufficiently informed of the basis for rejection of its proposal prior to any debriefing, the basis for protest obviously is known prior to the debriefing and the protester cannot successfully assert that it learned of grounds for protest only at the debriefing. See Informatics, Inc., B-188564, April 18, 1977, 77-1 CPD 272.

Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1978), provides in pertinent part as follows:

"* * * bid protests shall be filed not later than 10 [working] days after the basis of the protest is known or should have been known, whichever is earlier."

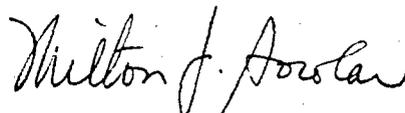
Here, we believe Bauer knew the bases for protest on September 29, 1978, when it received notification of proposal rejection, and cannot rely on the October 12 meeting with Air Force officials. Consequently, its protest filed with this Office on October 25, 1978, more than 10 days after the bases for protest were known, is untimely and not for consideration.

It is not clear from Bauer's submission if it is also protesting the Air Force's refusal to accept a revised proposal from it at the October 12 meeting. To the extent that it might be, we need only point out that by letter of August 28, 1978, the Air Force informed Bauer that it had until September 12, 1978, to submit its revised proposal and that

"[t]he Government plans to make a final determination as to whether your proposals are acceptable or unacceptable solely on the basis of the revised proposals as submitted and proceed with the second step without requesting further information."

Pursuant to that provision, Bauer should have known that negotiations would be closed as of September 12, and that no further revisions to proposals would be accepted.

The protest is dismissed.



Milton J. Socolar
General Counsel