

Murphy

DECISION



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

FILE: B-221935 **DATE:** April 2, 1986

MATTER OF: All-Bann Enterprises, Inc.

DIGEST:

Where a protester is not aware at the time of proposal submission that the agency interprets a specification differently than the protester, any protest of the allegedly ambiguous specification must be filed within 10 days after the protester learns of the agency's interpretation.

All-Bann Enterprises, Inc. protests the specification in request for proposals (RFP) No. DAAA09-85-R-0861, issued by the U.S. Army Armament, Munitions and Chemical Command, Rock Island, Illinois, for decontamination apparatus containers. The protester believes that the specification is ambiguous and does not provide a fair basis for an award.

We dismiss the protest as untimely.

The solicitation was issued on July 29, 1985, and the closing date for submission of initial proposals was October 1. On September 30, i.e., at approximately the same time that All-Bann submitted its proposal, questions arose about the proper interpretation of the specification under another one of the firm's contracts for the same item. The Army rejected a delivery under that contract, and All-Bann contended that the Army had changed its interpretation of the specification, and that similar items had been delivered and accepted for many years.^{1/} As a result of this dispute, All-Bann filed claims for equitable price adjustments of two Army contracts in December.

^{1/} According to All-Bann, the Army said that it rejected the containers because of concerns about a nitrogen cylinder included in the decontaminating apparatus container, including irregular fit, bulges on the cylinder cap, and flatness of the cap. Subsequently, in a study of the bulges on the cap, the Army identified cracking on some containers.

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All-Bann states that during November and December 1985 and January 1986, it expected the Army to revise the specification in the current solicitation to avoid the disputes that had arisen under the prior contracts. The Army conducted discussions in November and received best and final offers on December 13 without making such revisions. During a pre-award survey on January 16, All-Bann and the Army discussed the firm's manufacturing processes and the specification compliance questions that had arisen under the prior contracts. All-Bann states that the Army's technical representative indicated that he planned to review the specification, and the firm had the "impression" that specification changes and another request for best and final offers were likely.

On January 22, the firm states, it first learned that the Army continued in its view that problems with deliveries under other contracts had resulted from deviations from the specification, and that the agency did not plan to modify the RFP. All-Bann then filed this protest, questioning aspects of the specification at issue in its prior contracts.

Ordinarily, alleged ambiguities in the language of a solicitation must be protested to our Office prior to the solicitation's closing date. 4 C.F.R. § 21.2(a)(1) (1985). Where, however, the protester was reasonably unaware prior to that date that its interpretation was not the only one possible, it must protest not later than 10 working days after learning of a second interpretation. See Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 CPD ¶ 295.

Here, possible ambiguities in the specification became evident to All-Bann after it learned of the Army's September 30 rejection of deliveries, based upon alleged deviations from a similar specification in a prior contract. While the record does not establish exactly when All-Bann first received this notification, the protester states that it discussed the conflicting interpretations of the specification with the Army "throughout the fall of 1985," and it is apparent that All-Bann received the notification in October or November. Thus, All-Bann knew before the Army accepted best and final offers on December 13 that its interpretation of the specification language was not the only one possible.

The protester apparently continued efforts to persuade the Army of its interpretation of the language and to discuss the possible causes of the alleged deficiencies, but it did not protest to our Office regarding the current solicitation until February 3, more than 6 weeks after best and final offers.^{2/} All-Bann's expectation that the specification would eventually be revised did not obviate its obligation to file a protest within 10 working days after it knew the basis for its protest, which in our opinion was December 13 at the latest. See Resource Engineering Inc., B-212453, Feb. 14, 1984, 84-1 CPD ¶ 190. Accordingly, we find that the protest is untimely.

The protester contends that even if the protest is untimely, the protest issue should be considered by our Office under the "significant issue" exception to our timeliness rules. See 4 C.F.R. § 21.2(c). Under the significant issue exception, we will only consider untimely protests when the issue or issues raised are of widespread significance to the procurement community and have not been previously considered. Knox Mfg. Co.--Request for Reconsideration, B-218132, Mar. 6, 1985, 85-1 CPD ¶ 281. We construe this exception strictly and use it sparingly to prevent our timeliness rules from being rendered meaningless. WAECO Power, Inc., B-218036, Feb. 13, 1985, 85-1 CPD ¶ 224. This protest does not fall within the exception. Ambiguities in a solicitation have been addressed in numerous protest decisions by this Office, and, while the issue is important to the protester, it involves only one solicitation and is not of widespread interest to the procurement community. Buch Aerospace Services, Inc., B-220078, Dec. 20, 1985, 85-2 CPD ¶ 694; Farrell Lines, Inc.--Reconsideration, B-220442.2, Dec. 2, 1985, 85-2 CPD ¶ 619.

^{2/} Our Office received All-Bann's protest in a Western Union mailgram filed on February 3. The mailgram states that it is a confirmation copy of a TWX message sent on January 29, although we have no record of having received such a TWX. The protester contends that we should consider the protest as having been filed on January 29, and has sought evidence from Western Union to establish that the TWX message was actually conveyed to our Office. Since All-Bann knew the basis for its protest at least by December 13 and had 10 working days following that date in which to protest, a protest filed on either January 29 or February 3 would have been untimely.

We dismiss the protest.


Ronald Berger
Deputy Associate
General Counsel