

DECISION

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

51072

FILE: B-183434

DATE: September 30, 1975

MATTER OF: Dumont Oscilloscope Laboratories, Inc.

97394

DIGEST:

On reconsideration, prior decision of August 26, 1975, in same matter is affirmed that protest--filed 8 working days after protester's receipt of letter stating Army's intent to procure competitor's equipment--is untimely under 4 C.F.R. § 20.2(a) (1974). Sequence of events as illustrated by pertinent correspondence shows protester knew or should have known from Army's letter that agency intended to procure on sole-source basis from competitor.

Dumont Oscilloscope Laboratories, Inc. (Dumont), has requested reconsideration of our decision which found that its protest against a procurement action by the Department of the Army was not timely filed (Dumont Oscilloscope Laboratories, Inc., B-183434, August 26, 1975).

This decision, briefly, held that since the receipt on March 4, 1975, of a letter dated February 28, 1975, from the Department of the Army advised Dumont of the basis of its protest, its protest filed on March 14, 1975--8 working days later--was untimely under the provisions of 4 C.F.R. § 20.2(a) (1974) and not for consideration.

Dumont's request for reconsideration contends that our decision was erroneous because the February 28, 1975, letter did not expressly or implicitly state that Tektronix, Inc., would be the sole source for the entire procurement. Dumont believes that at most the February 28, 1975, letter may have rejected the Dumont model 1100P oscilloscope as an alternative for the Dumont model 765 and accepted the Tektronix model 465 as such an alternative. The essence of Dumont's position appears to be based on the contention that since the February 28, 1975, letter did not advise that its model 765 oscilloscope was unacceptable, it reasonably assumed that this model was still under consideration up to the time when it learned (allegedly on March 8, 1975) that the Army had actually modified the purchase order to procure the Tektronix model 465 on a sole-source basis.

We disagree with Dumont's position. We think that the following excerpts from correspondence between Dumont and the Army during the period from November 1974 to February 1975 are pertinent in this regard.

Dumont's letter to the Army dated November 4, 1974, contains these statements concerning the Army's plans to procure the Dumont model 765:

"* * * With a buy imminent in the last six months, we had assurances from NIKE personnel and Western Electric personnel that there could be no change from the 765 to any type scope, 'Dumont or not.' With that, and the delivery urgency, Dumont felt it should buy long lead items representing a cost of approximately \$100,000. Dumont received the RFQ from Western Electric on October 25th, dated October 22nd for a quantity of 111 units. Delivery for full order was scheduled to be completed by January 1975. On the RFQ due date of October 28th, I received a phone call from the Western Electric buyer * * * that the RFQ is being cancelled. This was even before he received our quotation. I have learned since that Army NIKE engineering has put a stop order on the 765MA.

* * * * *

"* * * The latest word from Western Electric and NIKE is that the Tektronix Model 465 is being sole sourced and Dumont is not being considered for this buy or any other phase of the NIKE Hercules program."

The Army's reply to this letter, dated November 14, 1974, states:

"The circumstances outlined in your letter have been reviewed with the appropriate personnel and I can find no indication that any discussions have been held by the Government to the effect that your oscilloscope would be procured for this application. In fact, a study is presently in process to determine a suitable commercial oscilloscope which will consider all offerors, including Dumont, as well as any related support costs, prior to a final decision."

Dumont's February 18, 1975, letter inquired concerning the status of the matter and stated:

"We have heard through various sources in our dealing with requirements people at Western Electric and Army, there may be a serious upset for Dumont. * * * [T]here seems to be some indication that the Dumont 765MH is not being considered at all and much worse, the Tektronix * * * 465A model may be sole sourced across the board without consideration for any of Dumont's products. * * *"

In reply, the Army's February 28, 1975, letter advised Dumont as follows:

"Your letter of 18 February 1975 concerning our review of oscilloscopes for use in NIKE HERCULES equipment has been received at this Command.

"Because of the extended period of time required for our evaluation, I think it is appropriate that I review the events leading up to our decision. As you are aware, we placed an order with Western Electric Company in May 1974 to procure the Dumont 765MA Oscilloscope. Prior to the order being placed by WECO it was determined that oscilloscopes, other than Dumont 765MA, might be used without a digital voltmeter resulting in considerable cost savings to the Government. Therefore, WECO was directed to stop the oscilloscope procurement pending completion of our evaluation.

"During this evaluation, the Tektronic 465 and Dumont 1100P Oscilloscopes were tested. After extensive testing of the Tektronic 465 Oscilloscope, it was determined that this unit, which is already used in some HERCULES Type IV equipment, was acceptable. Your Dumont 1100P Oscilloscope was functionally tested and no discrepancies were found in these limited tests.

"Based on a review of the test results and the fact that the Tektronic Oscilloscope is currently available in the Federal Supply System, MICOM has determined that this oscilloscope should be procured. Limited data on your Dumont Model 1100P Oscilloscope and its introduction as a new item in the Supply System make it unacceptable because of technical risk and increased support costs.

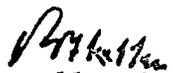
B-183434

"I appreciate your interest in our requirements and want to assure you that all technical and cost aspects were thoroughly evaluated in making our final decision."

We believe this sequence of events shows that the February 28, 1975, letter effectively advised Dumont that only the Tektronix equipment would be procured. There is no indication that the Dumont model 765 was still being considered subsequent to November 1974. The elimination of the Dumont model 1100P in February 1975 thus left the Tektronix model 465 as the only remaining alternative. More significantly, the above-quoted correspondence indicates that Dumont was well aware of the overall situation. In these circumstances, if Dumont did not obtain actual knowledge of the decision to procure only Tektronix equipment upon receipt of the February 28, 1975, letter, then it reasonably should have had such knowledge at that time. Since Dumont received the letter on March 4, 1975, a protest to our Office should have been filed not later than 5 working days thereafter, i.e., March 11, 1975.

Parenthetically, we would note that since the Army's November 14, 1974, letter denied Dumont's allegations concerning an oral agreement authorizing commitments for long-lead items, it could well be contended that any protest on this basis should have been filed not later than 5 working days after Dumont's receipt of this letter. In any event, viewing the matter most favorably to Dumont, the protest following the February 28, 1975, letter is untimely for the reasons already indicated.

Based on the foregoing, we are unpersuaded that Dumont's protest is timely or that the protester has demonstrated errors of law or fact in our earlier decision. Accordingly, that decision is affirmed.


Deputy Comptroller General
of the United States