



Decision

Matter of: RTI Technologies, LLC

File: B-401075

Date: April 15, 2009

A. Jonathan Bawabe for the protester.
Angela J. Cosentino, Esq., and Marvin D. Rampey, Esq., Department of the Navy, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is untimely under GAO's Bid Protest Regulations, where a protest on the same grounds was initially filed at the agency and denied, and filed with GAO more than 10 days after receipt of the denial; the protester's receipt of a required debriefing after receipt of the denial of the agency-level protest does not toll or provide an exception to our timeliness rules where an agency-level protest was filed.

DECISION

RTI Technologies, LLC protests the exclusion of its proposal from the competition under request for proposals (RFP) No. N00164-08-R-JM18, issued by the Naval Surface Warfare Center, for practice blasting caps.

We dismiss the protest.

The RFP, issued on July 23, 2008, sought proposals to furnish "MK 17 MOD 2" inert electric practice blasting caps under an indefinite quantity fixed-price contract. Offerors were required to enter their proposed prices onto a "pricing matrix table," which required step-ladder pricing on increasing quantity levels of blasting caps. Initial proposals were submitted, discussions conducted, and an amendment to the RFP containing a modified pricing matrix table was issued by the agency. RTI submitted a revised proposal that included a pricing table that the agency found was not compliant with the one included in the RFP amendment. Because the Navy concluded that RTI had therefore taken exception to the government's requirements and that the problem could not be resolved without further discussions, the agency eliminated RTI's proposal from the competition on January 20, 2009.

By letter dated January 20, 2009, the Navy notified RTI of its elimination from the competition. This letter explained why the agency reached the conclusion that RTI's proposal was unacceptable and that discussions would be required to correct this problem. On January 21, RTI sent a letter to the contracting officer requesting that the agency reconsider the decision and reinstate RTI's proposal in the final evaluation for award. In this letter, RTI argued that the assertedly noncompliant pricing matrix was the result of a "clerical error" by RTI that could be addressed through clarifications and would not require the agency to reopen discussions. The contracting officer denied RTI's request on January 22, reiterating the position that the government could not determine RTI's intended pricing, and further explaining that the alleged error in RTI's pricing matrix could not be corrected without reopening discussions. RTI then sent an e-mail message to the contracting officer on January 23 advising that it intended on submitting a pre-award protest later that day. Instead of filing a protest, however, RTI, on that same date, requested a debriefing, and advised the contracting officer that it would withhold filing a protest until after the debriefing. The agency provided RTI a debriefing on January 27, which provided RTI with essentially the same information that the agency provided on January 22. RTI then filed this protest with our Office on February 3 challenging the agency's decision to eliminate its proposal from the competition and arguing that the clerical error could have been resolved through clarifications.

The Navy argues that RTI's protest to our Office is untimely because it was filed with our Office more than 10 days after the agency denied RTI's request for reconsideration, which the agency argues constituted initial adverse agency action in response to an agency-level protest by RTI. RTI argues that its request for reconsideration was not an agency-level protest and that since it obtained a debriefing, it could file its protest within 10 days of the debriefing and be considered timely. We agree with the Navy.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Where a protest first has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (2008). The term "adverse agency action" means any action or inaction on the part of a contracting agency that is prejudicial to the position taken in a protest filed there. 4 C.F.R. § 21.0(f). In this respect, our 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. Dominion Aviation, Inc.—Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

As noted above, the parties disagree whether RTI's January 21 request for reconsideration constituted an agency-level protest. However, even if a letter to the agency does not explicitly state that it was intended to be a protest and even if the letter was not intended to be a formal bid protest, we will nevertheless consider the

letter to be a protest, where it conveys an expression of dissatisfaction and a request for corrective action. St Aerospace Engines Pte. Ltd., B-275725.3, Oct. 17, 1997, 97-2 CPD ¶ 106 at 3-4; American Material Handling, Inc., B-250936, Mar. 1, 1993, 93-1 CPD ¶ 183 at 2-3; Imperial Maint., Inc., B-221257, Jan. 8, 1987, 87-1 CPD ¶ 34 at 3. Thus, we consider RTI's January 21 letter requesting "reconsideration" of the agency's decision to reject its proposal and corrective action to constitute an agency-level protest. Imperial Maint., Inc., *supra*.

The initial adverse agency action in response to this agency-level protest was the agency's January 22 letter refusing to reconsider its decision to eliminate RTI's proposal from the competition. RTI's protest to our Office was filed on February 3, more than 10 days from when RTI learned of the initial adverse agency action on its agency-level protest. Therefore, RTI's protest to our Office is untimely filed under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3).

As noted, RTI nevertheless argues that its protest to our Office is timely because it was filed within 10 days of the required debriefing that it obtained from the agency. Our Bid Protest Regulations provide an exception to the general, 10-day rule for filing a protest at our Office if the protest challenges "a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required" and the protester has been afforded a required debriefing. 4 C.F.R. § 21.2(a)(2); M2 Global Tech., Ltd., B-400946, Jan. 8, 2009, 2009 CPD ¶ 13 at 3. Such a protest to our Office may be filed 10 days after the date on which the required debriefing is held. 4 C.F.R. § 21.2(a)(2). This exception is not applicable here, however, because RTI elected to file an agency-level protest, which is covered by 4 C.F.R. § 21.2(a)(3), which contains no exception to our timeliness rules based upon the request and receipt of a required debriefing. M2 Global Tech., Ltd., *supra*. That is, a debriefing, required or not, does not toll the requirement that a protest be filed within 10 days of adverse action on an agency-level protest. Because RTI did not learn any more information at the debriefing, given that the basis on which it has challenged the agency's action is essentially the same as that in its agency-level protest, its protest to our Office is untimely filed under our Bid Protest Regulations.

The protest is dismissed.

Gary L. Kepplinger
General Counsel