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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Supreme Edgelight Devices, Inc.

File: B-295574

Date: March 4, 2005

Darren Cuoghi for the protester.
Robert E. Sebold, Esq., Defense Logistics Agency, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Saturday receipt of an agency-level protest decision by a clerk employed by the protester did not constitute actual or constructive knowledge of the initial adverse agency action on that date, where Saturday was a non-business day for the protester and the envelope containing the decision was not opened until Monday, the first business day after receipt.

2. Agency had a reasonable basis to cancel a request for quotations for an aircraft part, which the solicitation indicated was a critical application item and for which the agency did not have technical data, where the agency wished to investigate the impact of a change in revision levels for the drawing that controlled the manufacture of the part and determine whether the protester's quoted part would satisfy the agency's needs.

DECISION

Supreme Edgelight Devices, Inc. protests the cancellation of request for quotations (RFQ) No. SPO470-04-Q-6455, issued by Defense Supply Center Richmond (DSCR), Defense Logistics Agency (DLA), for aircraft light plates.

We deny the protest.

DSCR is responsible for buying and managing spare parts for United States military aircraft. On September 27, 2004, DSCR issued the RFQ for 174 light plates, which connect to the oxygen regulator panel on various military aircraft. The light plates were identified as Carleton Life Support Systems, Inc. part number 1611735-1, National Stock Number (NSN) 1660-00-967-3664. Vendors were informed that the

light plates were a "critical application item" subject to configuration control and that DCSR did not currently have a technical data package available for this NSN. RFQ at 2. Apart from identifying the light plates as a Carleton Life Support Systems part, the solicitation did not specifically identify any approved sources for the light plates.

DSCR received quotations from Supreme and Derco Aerospace, Inc., an authorized distributor for Carleton Life Support Systems. Although Supreme had provided this item under prior contracts as an approved source, Supreme's name had been removed from the source approved list because the design drawings had been revised. DSCR rejected Supreme's quote and awarded a purchase order to Derco, whose quotation indicated that Derco would provide Carleton Life Support Systems Inc. part No. 1611735.

Supreme timely protested to the agency, arguing that it had previously provided the "exact item" to DSCR as an approved source and in accordance with drawings Supreme had legally received from Drägerwerk AG, a company that Supreme contends is strategically allied with Carleton Life Support Systems. Agency-Level Protest at 1-2.

In response, DCSR informed Supreme that Supreme was not considered an approved source because there was a new revision level for this item--that is, the drawing, upon which Supreme relies, is at revision level "AK" but that the more recent drawing for the item is at revision level "AL." The agency states that "DCSR does not at this time know whether an offer for material built to an earlier revision level is acceptable." Response to Agency-Level Protest at 1. The agency also noted that the RFQ inadvertently failed to include DLA's required clause No. 52.217-9002, "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items," which informed vendors that only the exact item identified in the solicitation is known to be acceptable and informs vendors who wish to quote parts from other sources what information and/or data must be submitted to demonstrate that the offered product is interchangeable with the listed product. Id.; Contracting Officer's Statement at 4-5. Accordingly, the agency decided to terminate the award to Derco, cancel the RFQ, and resolicit this requirement. This protest to our Office followed.

DCSR requests that we dismiss as untimely Supreme's protest to our Office because, although Supreme admitted receiving a copy of the agency's decision on Saturday, December 11, it did not file its protest with our Office until December 23, more than 10 days after receipt of the agency-level protest decision. The protester responds that it is not open on weekends, and that although a clerk received the envelope containing the agency-level protest decision on Saturday, December 11, the envelope was not opened by the protester until Monday, December 13.

Our Bid Protest Regulations provide that where, as here, a protester timely files an agency-level protest, any subsequent protest to our Office must be filed within 10 days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R

§ 21.2(a)(3) (2004). In an analogous case, we found that a protester's receipt on Saturday (a non-business day) by electronic mail of the agency's notification that the firm had been excluded from the competitive range should be considered as received by the protester on the next business day for the purposes of determining whether a request for a required debriefing was timely. See International Res. Group, B-286663, Jan. 31, 2001, 2001 CPD ¶ 35 at 5.

The agency argues that our decision in International Res. Group is inapplicable here because that decision did not concern the computation of time required to file a protest with our Office but only concerned when a protester was deemed to have received notice of its competitive range exclusion for the purposes of requesting a required debriefing. We do not agree that this difference distinguishes the rule stated in International Res. Group. In either situation, the time period for requesting a required debriefing or filing a protest with our Office commences with a protester's actual or constructive knowledge of initial adverse agency action. As we found in International Res. Group, the mechanical receipt of notice on a non-business day, where the notice is not actually read, does not constitute actual or constructive knowledge. With respect to receipt outside the protester's ordinary business hours (for example, a weekend), we find no practical difference between by e-mail or by the protester's clerical or security personnel for purposes of determining whether a protester has received constructive or actual notice of initial adverse agency action.[1]

Thus, we find that receipt of the agency's decision on Saturday by a clerk employed by Supreme, where Saturday was not an ordinary business day for the protester and where the decision was in fact not opened or reviewed, does not constitute constructive knowledge of initial adverse agency action. Rather, we conclude that Supreme had actual or constructive knowledge of the agency's protest decision on Monday, December 13, the next business day. Accordingly, Supreme's protest, which was filed within 10 calendar days of that date, is timely.

Supreme challenges the cancellation of the solicitation, complaining that "Form, Fit or Function does not seem to vary between" the various revisions levels of the light plates and that "[s]urely, this means we had our name removed from the source approval list based upon a false premise which DSCR surely knew about and complied with."[2] Protester's Comments at 1. Supreme contends that its removal

[1] In contrast, actual knowledge of adverse agency action, even when received on a non-business day, commences the time for filing a protest with our Office. See Atkinson Dredging Co., B-218030.2, July 3, 1985, 85-2 CPD ¶ 22.

[2] Supreme also requests that DCSR exercise an option under an indefinite-quantity contract that it had with DCSR for the light plate. DCSR states, however, that although the agency had ordered 189 light plates from Supreme under contract No. SP0470-03-D-1383, this contract expired in September 2004 when the agency did not exercise the first contract option period. Contracting Officer's Statement at 2.

from the source approval list and award to Derco was as a result of "collusion between the parties involved." Protest at 2.

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ. So long as there is a reasonable basis, an agency may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. SKJ & Assocs., Inc., B-294219, Aug. 13, 2004, 2004 CPD ¶ 154 at 2-3.

Here, we find that the cancellation of the RFQ was entirely appropriate. It is undisputed that the drawings upon which Supreme would rely in producing the light plates is at a lower revision level--level "AK"--than the level currently specified for this item.[3] Although Supreme argues that the difference in revision level does not affect "fit, form or function," DCSR states that it does not know the impact, if any, of the difference in revision levels. In this regard, there is no information in the record regarding the difference between the two revision levels. Also, the RFQ failed to include the required DLA clause that instructs vendors offering alternate products to provide information and/or data to show that its product is interchangeable with the exact item specified in the solicitation. Under these circumstances, we find the agency reasonably cancelled the solicitation. Cancellation of the solicitation provides Supreme with an opportunity to determine whether it can offer the exact part sought by the agency--that is, a part manufactured to revision level "AL"--or to qualify an alternate part.

With regard to Supreme's contention that its removal from the source approval list and award to Derco was as a result of "collusion between the parties involved," we will not attribute bias or bad faith to an agency on the basis of inference and supposition. Chenega Mgmt., LLC, B-290598, Aug. 8, 2002, 2002 CPD ¶ 143 at 4. The record here simply contains no evidence--beyond the protester's speculation--that the removal of Supreme from the source approval list, the award to Derco (which has been terminated) or the cancellation of the solicitation was as a result of bias or bad faith.

The protest is denied.

Anthony H. Gamboa
General Counsel

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[3] Supreme also argues that it was removed from the source approved list because of an allegation that Supreme did not have the right to use the drawings it received from Drägerwerk. DCSR denies this and stated in its decision on the agency-level protest that it "generally does not make a determination as to whether a company is in lawful possession of data" and that this "is an issue between the two companies." AR, Tab R, Agency-Level Protest Decision, at 1-2.