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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Raith Engineering and Manufacturing Company, W.L.L.

File: B-298333.3

Date: January 9, 2007

Ronald A. Schechter, Esq., and Chad E. Miller, Esq., Arnold & Porter, for the protester.

Maj. Jayanth Jayaram, Department of the Army, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest to the Government Accountability Office will not be considered where it is preceded by an initial agency-level protest that was untimely filed more than 10 days after the protester was given a debriefing.

DECISION

Raith Engineering and Manufacturing Company, W.L.L. protests the award of a contract by the Department of the Army to Kellogg Brown and Root Services, Inc. (KBR) pursuant to request for proposals (RFP) No. W912D1-06-R-0032, issued to procure fuel support operations at two sites in Kuwait. Raith argues that the Army's selection of KBR was based on an unreasonable evaluation of proposals.

We dismiss the protest.

On Thursday, November 16, 2006, the Army made award to KBR and provided Raith with an e-mail notification of the award decision. On Monday, November 20, Raith requested a debriefing; the debriefing was provided, in writing, on November 22.

Three days after receipt of the debriefing, on November 25, Raith requested a meeting with the contracting officer (CO). This request for a meeting both advised that Raith was seeking additional information about the award decision, and that it was providing "notice of protest," which it described as "subject to sustainment or withdrawal dependent upon the outcome of the meeting." Agency Report (AR), Tab 5. The CO sought clarification from Raith about its request, asking, by e-mail, whether the request was a protest, which would trigger agency protest procedures,

or was simply “notification that you may protest this award pending the results of the below requested meeting.” Id., Tab 6. In response, Raith answered, “It is our intention in accordance with FAR [Federal Acquisition Regulation] regulations to have a meeting to discuss the issues raised before finalizing our decision to protest the awarding of the contract.” Id., Tab 7.

On November 29, Raith and the CO met to again discuss the debriefing materials, and on Monday, December 4, at 5:49 p.m., Raith filed by e-mail an agency-level protest challenging the award to KBR. On December 7, the Army dismissed the agency-level protest as untimely. On December 18, Raith protested to our Office. There is no dispute that the protester learned the information upon which the protest is based during its November 22 debriefing.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals, 4 C.F.R. § 21.2(a)(1) (2006), and all other protests generally must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Further, our Regulations provide that a matter initially protested to the contracting agency will be considered only if the initial protest was filed within the time limits for filing a protest with our Office, unless the contracting agency imposes a more stringent time for filing, in which case the agency’s time for filing will control. 4 C.F.R. § 21.2(a)(3).

The Army raises three alternative challenges to the timeliness of Raith’s agency-level protest, and hence to our ability to hear Raith’s subsequent protest to our Office. Specifically, the Army contends that: (1) Raith failed to request a debriefing within 3 calendar days, thus the debriefing it received on November 22 was not a “required debriefing,” and, regardless of what the protester learned as a result of the debriefing, its protest was due within 10 calendar days of the day it learned of the award, rather than within 10 days of the debriefing; (2) Raith’s agency-level protest was untimely filed because the tenth calendar day after the debriefing fell on Saturday, December 2 and Raith did not file the protest until Monday, December 4; and (3) Raith’s 5:49 p.m. filing with the agency on Monday, December 4 was after the 4:30 p.m. filing time deadline for agency-level protests established by FAR § 33.101, and therefore should be considered to have been filed on the next business day. We disagree with the Army’s first two contentions, but agree that Raith missed the 4:30 p.m. deadline for filing its agency-level protest on Monday, December 4.

On the first issue, the Army misconstrues the effect of a “required debriefing.” FAR § 15.506(a)(1) provides that “[a]n offeror, upon its written request received by the agency within 3 days after the date [of notification of contract award] shall be debriefed and furnished the basis for the selection decision and contract award.” In those cases where a debriefing is requested and required, a protest filed not later than 10 days after the date of the debriefing will be timely. 4 C.F.R. § 21.2(a)(2).

The only effect a required debriefing has on our timeliness requirements is the tolling of the filing period in limited circumstances. See Trifax Corp., B-279561, June 29, 1998, 98-2 CPD ¶ 24 at 4-5. Even where a disappointed offeror does not secure a required debriefing, it continues to retain its right to file a protest within 10 calendar days after it learns, or should have learned, the basis for protest, provided it has diligently pursued the matter. See 4 C.F.R. § 21.2(a)(2). This includes the right to file a timely protest based on information obtained during a debriefing that was not required.¹ See Trifax Corp., *supra* (holding that a protest based on information first revealed in a non-required debriefing may be filed under the generally applicable regulations for filing timely protests).

The Army's second contention is that the protester was required to file its agency-level protest within 10 calendar days of the debriefing, by Saturday, December 2. In the Army's view, since its offices in Kuwait are open on Saturdays, and since Raith is familiar with the hours of the contracting office there, it was required to file its agency-level protest on Saturday, rather than on the following Monday. We again disagree. We see no basis for concluding that the weekend hours worked by the Army's contracting office in Kuwait override the clear regulatory guidance applicable to all protests of federal government procurements, which provide that a protest filed on a Saturday, Sunday, or federal holiday is filed on the next business day. FAR § 33.101.

We turn last to the Army's argument that Raith's agency-level protest was untimely because it was filed at 5:49 p.m. local time on Monday, December 4, after the

¹ We also note that the Army's premise that the request for a debriefing here was not filed in time to generate a required debriefing misstates the applicable rules. The FAR protest regulations provide that the term "day" means a calendar day, and advise as follows:

In the computation of any period—

(1) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(2) The last day after the act, event, or default is included unless—

(i) The last day is a Saturday, Sunday, or Federal holiday

FAR § 33.101. Since the third calendar day after Raith received notification of the award decision was a Sunday, the FAR expressly anticipates that requests like these can be filed on Monday.

4:30 p.m. filing time established in the FAR. In response, Raith argues that its filing should be considered timely because the contracting office routinely conducts business after 4:30 p.m.; Raith also points to the sending time of several of the agency e-mails in this record to buttress its claim.

We disagree with Raith's response to this argument for the same reason we disagreed with the Army in the argument above. Simply put, we will not look to the workday customs of U.S. government offices operating in a foreign country--as the Army urges--or to the longer working hours of certain U.S. government offices, as the protester urges--for an overlay to the FAR's requirements for filing a timely bid protest. Such an approach would increase uncertainty for protesters and agencies, and would not serve the interests of the procurement system.² Since Raith filed its agency-level protest after the FAR deadline of 4:30 p.m. on the last available day for filing a protest based on its debriefing, its agency-level protest was untimely, and we will not consider its subsequent protest to our Office.³ Orbit Advanced Techs., Inc., B-275046, Dec. 10, 1996, 96-2 CPD ¶ 228 at 4.

The protest is dismissed.

Gary L. Kepplinger
General Counsel

² Raith also contends that, even if its protest was not timely filed, it should be considered under either the "good cause" or "significant issue" exceptions to our timeliness requirements, 4 C.F.R. § 21.2(c), because of certain alleged integrity issues surrounding an earlier iteration of this procurement. In response to those earlier allegations, Raith acknowledges that the Army cancelled the prior award and conducted a new competition, and Raith raises no allegation of any impropriety in the current procurement. Our good-cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. Dontas Painting Co., B-226797, May 6, 1987, 87-1 CPD ¶ 484 at 2. The significant-issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community, and which have not been considered on the merits in a prior decision. Schleicher Cmty. Corrs. Ctr., Inc., B-270499.3 et al., Apr. 18, 1996, 96-1 CPD ¶ 192 at 7. Neither exception applies in this case.

³ For the record, Raith does not argue that its November 22 e-mail constitutes an agency-level protest. Given Raith's answer to the CO's request for clarification, any such argument would not be viable in any event. See AR, Tab 7.