



Comptroller General  
of the United States

Washington, D.C. 20548

154548

## Decision

**Matter of:** Technical Data Development, Inc.

**File:** B-261381

**Date:** June 15, 1995

Patrick M. Harris, for the protester.

### DIGEST

Adverse agency action is any action or inaction on the part of the contracting agency which is prejudicial to a protest filed with contracting agency; undue delay or inattention to protest constitutes adverse action.

### DECISION

Technical Data Development, Inc. (TDDI) protests the actions of the Department of the Army in connection with solicitation No. DAAA09-91-B-0813. Technical Data requests that the solicitation be canceled and reissued and that it be reimbursed for the costs it incurred under this solicitation.

The protester states that the solicitation was issued in 1991, that vendors were required to submit samples, that all samples failed the testing to which they were eventually subjected, and that in September of 1994 the agency informed vendors that the specifications would be revised and that new samples would be tested against the revised specifications. The protester further states that on September 30 it protested to the agency that the change in requirements rendered its development effort useless and requested reimbursement of its development costs. The specifications were revised on December 5. In subsequent correspondence in January and May 1995, TDDI continued to seek reimbursement. It protested here after the agency, by letter of April 28, informed the protester that there was no basis to honor the request for reimbursement.

As its basis for protest, TDDI asserts that the Army acted unfairly and with the intent to favor another vendor who only entered the competition after the specifications were revised. TDDI seeks reimbursement of its development costs and cancellation of the solicitation so that "a fair procurement process . . . can begin."

The protest is untimely. Once TDDI protested to the Army, as it says it did in September 1994, a subsequent protest to us, to be timely, had to be filed within 10 days of TDDI's actual or constructive knowledge of any adverse agency action on its protest. 4 C.F.R. § 21.2(a)(3) (1995). While adverse action typically is a denial of the protest, it may also be a continuation of the procurement process, such as the opening of bids or the receipt of proposals in the face of a specification protest, or the award of a contract. 4 C.F.R. § 21.0(f). It may also be undue delay on the part of the agency in responding to the protest. 52 Comp. Gen. 792 (1973).

Here, the agency's revision of the specifications in December could well be viewed as action adverse to the protest filed in September since it reflected the agency's intent to proceed in the manner objected to by TDDI and which provided the basis for TDDI's reimbursement claim. Even if it is not so viewed, however, we consider the agency's long delay in responding to the protester's September 30 letter itself to be adverse action. Illitron, B-192309; Aug. 7, 1978, 78-2 CPD ¶ 100 (delay of 3 months is adverse action). In other words, although TDDI wrote follow-up letters to the Army on January 10 and March 29, it should have--prior to those dates--treated the Army's failure to respond as adverse action and then protested here. The May 12 protest filed with us after the Army finally acted at the end of April is simply too late to satisfy the bid protest timeliness rules.

The protest is dismissed.

\s\ Ronald Berger  
Ronald Berger  
Associate General Counsel