

Liberty



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Paradigm Automation, Inc.

File: B-270360

Date: December 11, 1995

DECISION

Paradigm Automation, Inc. protests the proposed award of a sole-source contract to United Technologies, Waterjet Systems, Inc., under solicitation No. N00600-95-N-3559, issued by the Department of the Navy for an ultra high pressure water blast recovery and filtration system.

We dismiss the protest.

On September 18, 1995, the agency published a synopsis in the Commerce Business Daily (CBD) announcing its intention to procure the system on a sole-source basis from United Technologies. The synopsis contained detailed physical and performance characteristics for the system. The synopsis, referencing CBD footnote 22, stated that interested firms should submit technical literature describing their capability to provide the item, as well as terms and conditions and a complete price quote, within 45 days of publication of the synopsis. The synopsis also stated that no solicitation existed, and that requests for a copy of the solicitation would be ignored unless a solicitation were subsequently issued. The synopsis advised that all responses from responsible sources would be fully considered; as a result of the evaluation of responses received, the contracting officer could determine to issue a competitive solicitation.

On October 10, Paradigm sent a one sentence facsimile notice to the agency requesting a copy of the solicitation, but did not otherwise express interest as required by the CBD synopsis. On October 19, Paradigm was orally advised by the agency that no solicitation existed, but that Paradigm could express its interest in accordance with the terms outlined in the synopsis. On October 30, prior to the expiration of the 45-day period, Paradigm filed this protest challenging the terms of the agency's proposed sole-source award. By November 2, the end of the referenced 45-day period, Paradigm had not expressed any interest, as required by the synopsis. However, four other firms did timely express interest.

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As a prerequisite to filing a protest against a sole-source procurement, we require the protester to submit a timely expression of interest in response to the CBD synopsis of the procurement; if the agency rejects the protester and proceeds with its sole-source approach, the protester then must file its protest within 10 days after it knows, or should have known, of the rejection. Bombardier, Inc., Canadair Challenger Div., B-244328, June 17, 1991, 91-1 CPD ¶ 575; Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. This rule gives the agency an opportunity to consider an offeror's preliminary proposal in order to decide whether to open a procurement to competition, while allowing only serious potential offerors to challenge the agency's sole-source decision. Id. A protest of an agency's announced intention to procure its requirement on a sole-source basis filed before the agency rejects the protester's preliminary proposal is premature. Id. Here, the agency currently is considering the four expressions of interest it received in response to the synopsis; any challenge to a future decision by the agency to follow through on its intention to procure its requirement on a sole-source basis is premature.

The only basis for protest prior to rejection of a response to a CBD synopsis of an intended sole-source award is where the protester asserts that submitting its expression of interest would be futile. In such cases, we have stated that we would consider a protest filed within 10 days of the publication of the synopsis. Id. To the extent Paradigm believed that it would have been futile for the firm to first file an expression of interest because the agency was firmly committed to a sole-source procurement, as evidenced by the agency's stated intention not to issue a competitive solicitation, Paradigm's protest, filed approximately 6 weeks after publication of the synopsis, is untimely. Moreover, Paradigm states in its protest that its "personnel have extensive experience in the field of automation, robotics and high pressure waterjet coating removal [and its] key personnel have been involved with the high pressure water blast technology since 1989." In light of this information, Paradigm has failed to explain why, even in the absence of a solicitation, it was unable to submit an expression of interest within the 45-day period after publication of the synopsis. We point out that while the agency did not issue a solicitation,¹ the synopsis contained detailed physical and performance

¹Although the synopsis references a point of contact for purposes of requesting "a copy of the solicitation," this statement must be read in the context of the entire synopsis, namely, that "no solicitation exist[ed]" and that a competitive solicitation would only be issued and available, if upon evaluation of the expressions of interest timely filed in response to the synopsis, the agency concluded that there were other sources capable of satisfying its requirements.

specifications which four firms found sufficient for purposes of submitting timely expressions of interest for agency evaluation.

The protest is dismissed.

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