

PL-1
Burnett

19116

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202677, B-202887

DATE: August 12, 1981

MATTER OF: R. E. White and Associates, Inc.

DIGEST:

1. Protests by dealer in surplus equipment alleging that seal testing requirement incorporated in solicitations was unnecessary are untimely since protests were filed after closing dates for proposals. See 4 C.F.R. § 21.2(b)(1) (1981).
2. Contention that QPL manufacturer will not be required to perform seal tests on its relays during contract performance is speculative.

On March 30, 1981, R. E. White and Associates, Inc. (White), a dealer in surplus electrical components, submitted a protest under request for proposals (RFP) No. DLA900-80-R-4226 which was issued by the Defense Electronics Supply Center of the Defense Logistics Agency (DLA-DESC). On April 14, 1981, White also filed protest under RFP DLA900-81-R-0689. In this latter protest, White requested that the two protest actions be joined since the same basic issues were involved.

The solicitations sought proposals for two types of relays which are utilized in military aircraft as well as in certain ground support applications. White claims that "seal" testing of its surplus relays for quality assurance purposes during contract performance pursuant to a military specification incorporated in the RFP's is an unnecessary solicitation requirement. White also alleges that DLA-DESC will not require Leach Corporation, a "Qualified Products List" (QPL) manufacturer which also submitted a proposal under RFP-4226, to conduct seal tests on its relays. White

~~017874~~ 116089

further argues that Leach should be required to re-qualify its current relay under QPL procedures since the relay, allegedly, is of a new design.

Our Bid Protest Procedures require that protests based on alleged improprieties in any type of solicitation which are apparent prior to the closing date for receipt of proposals shall be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1981).

The closing date for receipt of initial proposals for RFP-4226 was September 12, 1980. However, a formal protest concerning the seal test requirement was not made to DLA-DESC until March 5, 1981. The seal test was clearly stipulated in paragraph 6.5 under Table XXVII of Military Specification MIL-R-6106 H, and the RFP stated that the relays be manufactured and tested in accordance with MIL-R-6106 H. Consequently, the alleged impropriety was apparent prior to the closing date for receipt of proposals but was not protested before that date. White's protest is, therefore, untimely.

The closing date for receipt of proposals for RFP-0689 was December 4, 1980; however, White did not protest the required seal test until April 14, 1981. Since the specifications for RFP-0689 were substantially the same as for the earlier solicitation, White's protest of the seal test requirement under this solicitation is also untimely.

White also contends that it has been treated unfairly since DLA-DESC will not require Leach to conduct seal tests on its relays during contract performance. DLA-DESC contests this allegation and states that the QPL manufacturer is required by the specifications to perform the MIL-R-6106 H seal test to the same extent as surplus dealers. White has not provided any evidence to support its assertion. Accordingly, this ground of protest is speculative.

White's final contention is that Leach should have been required to requalify its current relay under QPL procedures since the relay, allegedly, is of a new design. On this score, DLA-DESC informs

us that the Air Force certified Leach's new design on April 20, 1979, and found that the product exceeded the requirements of Leach's original relay. In view of this statement, we reject this ground of White's protest.

Accordingly, the protest is dismissed in part and denied in part.

A handwritten signature in cursive script that reads "Milton J. Asolan". The signature is written in dark ink and is positioned above the typed name and title.

Acting Comptroller General
of the United States