DECISION

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

27326

FILE: B-213458 DATE: February 2, 1984

MATTER OF: Trident Motors Inc.

DIGEST:

1. Protest based on alleged RFP impropriety that was apparent on the face of the solicitation is untimely since it was not filed prior to the closing date for receipt of initial proposals.

2. Protest against alleged improprieties in a solicitation amendment that also requested best and final offers, filed with the offeror's response to the amendment, is untimely under GAO Bid Protest Procedures.

Trident Motors Inc. protests the restrictive nature of the specifications used by the Department of the Army to procure gasoline-driven motor scooters with air-cooled engines under request for proposals (RFP) No. DAAE07-83-R-H323. Trident's offer of a liquid-cooled engine was rejected as noncompliant with the specifications.

We dismiss the protest.

The RFP was issued on July 20, 1983, and the date for receipt of initial proposals, extended at Trident's request, was September 2. Trident, one of two firms responding, did not meet a number of the RFP's specifications, including the one for an air-cooled engine. The Army requested best and final offers by September 26 through RFP Amendment 6, which reiterated the engine requirement. Nonetheless, Trident's best and final offer, which was the higher-priced of the two received, still proposed a liquid-cooled engine for its scooter, and it therefore was rejected. The offer was accompanied by a letter of protest against the engine specification, which the contracting agency denied on October 7. Trident protested to our Office on October 19.

Trident contends that by limiting the procurement to air-cooled engines, the specifications unduly restricted competition and prevented the Army from acquiring a more cost-effective vehicle. Trident argues that its price, if evaluated on a life cycle basis, would prove to be more economical than the other offer. Trident further contends that before it submitted its initial offer, the buyer led the firm to believe that it could offer such an engine and that if the vehicle was found to be acceptable, the buyer would notify the using agencies of its availability so that those agencies could choose between an air-cooled and a liquid-cooled engine.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), require that protests based upon alleged improprieties in an RFP which are apparent before the closing date for receipt of initial proposals be filed with either the contracting agency or this Office prior to that date. Sandia Die & Cartridge, B-211555, September 14, 1983, 83-2 CPD 324. Here, the RFP clearly did not provide for the use of life cycle costing in evaluating offers. Since Trident did not protest the RFP evaluation method before the closing date for receipt of initial proposals, we will not consider the merits of its position on this matter.

As to the engine requirement, we believe that in view of the unambiguous language in the RFP as issued that air-cooled engines were required, it was unreasonable for Trident to rely on any alleged oral advice to the contrary that may have been received from the buyer. The solicitation included Standard Form 33, which states that oral explanations or instructions given before award of a contract will not be binding, and we frequently have held that offerors rely on oral advice at their own risk if the oral advice conflicts with the written terms of the solicitation. See Inventive Packaging Corporation, B-213439, November 8, 1983, 83-2 CPD 544.

In any case, the Army reiterated the requirement for an air-cooled engine in its request for best and final offers which, notwithstanding any earlier advice to the contrary, properly alerted Trident that its liquid-cooled

engine was not acceptable. If we assume that Trident thus did not have a reason to protest until receipt of Amendment 6, the September 26 protest to the contracting agency nevertheless is untimely. Under section 21.2(b)(1) of our Procedures, a protest against an alleged impropriety in an RFP that is incorporated by an amendment to the solicitation must be filed before revised offers are due in response to the amendment. Spacesaver Systems, Inc., B-211817, August 29, 1983, 83-2 CPD 272. A protest filed with a proposal on the due date for the offerors' responses does not meet the filing requirement of section 21.2(b)(1). Precision Dynamics Corporation, B-207823, July 9, 1982, 82-2 CPD 35. Since our Office will not consider a protest that follows an untimely protest to the contracting agency, 4 C.F.R. § 21.2(a), we will not consider the merits of Trident's protest that the RFP requirement for air-cooled engines, which caused the rejection of the firm's offer, was unduly restrictive.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel