

DECISION



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

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FILE: B-210427, B-210427.2 & **DATE:** February 23, 1984
B-210997
MATTER OF: United Aircraft and Turbine Corporation

DIGEST:

1. Protester bears the responsibility for the delivery of quotations. Protest is denied because protester has not affirmatively proven that it submitted quotations the procuring agency claims it did not receive.
2. Protest alleging that various solicitations for spare parts were defective because they required nonmanufacturers offering to supply parts made by the approved manufacturers listed in the solicitation to submit documentation showing that they were either authorized dealers for the listed manufacturer's parts or that they intended to obtain the parts from the manufacturer listed in the solicitation or an authorized dealer is untimely where the alleged defect was apparent from the face of the solicitation, but the protest was not filed until after the closing dates for receipt of quotations.

United Aircraft and Turbine Corporation (UATC) protests the award of 21 purchase order contracts issued by the Defense Industrial Supply Center (DISC) of the Defense Logistics Agency. UATC contends that it was the low offeror on each of the solicitations, but still did not receive the awards. We deny the protest in part and dismiss the protest in part.

The agency conducted all of the procurements--for various spare parts--under the Defense Acquisition Regulation (DAR) small purchase procedures, DAR § 3-600 et seq., using its automated purchasing system under which solicitations were generated by computer and the responses computer evaluated. Each of the solicitations identified the part required by a manufacturer's code and a part number and

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specified that only these items or items from another previously approved source would be acceptable. The solicitations also incorporated a provision (clause L06) which stated that nonmanufacturers offering to supply the manufacturer's part cited in the solicitation were required to submit (1) documentary evidence that it was an authorized dealer of the approved manufacturer, or (2) a copy of the quotation or invoice which established that the offeror obtained the item from the manufacturer or its authorized dealer. The clause cautioned nonmanufacturers that offers submitted without this evidence would be treated as technically unacceptable.

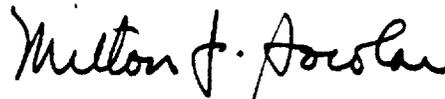
UATC contends that it submitted timely quotations under all 21 of the procurements. However, DISC's records do not indicate the receipt of UATC quotations on 11 of the procurements. UATC asserts improper government action, but has not submitted any evidence to support its contention. UATC's protest as to these 11 procurements is accordingly denied because UATC has not satisfied its burden of proving the timely submission of its quotations or improper government action. M-F Services, Inc., B-210954, January 20, 1984, 84-1 CPD ___; United Aircraft and Turbine Corporation, B-210052, July 6, 1983, 83-2 CPD 58. In any event, even if UATC could show that the agency misplaced its quotations, we have held that we will not disturb a small purchase award on such a basis absent evidence of a conscious or deliberate effort by the contracting officer to prevent the selection of the protester. See R.E. White & Associates, Inc., B-211333, June 28, 1983, 83-2 CPD 38. There is no evidence that such was the case here. Indeed, we found in United Aircraft and Turbine Corporation, B-210710, August 29, 1983, 83-2 CPD 267, that UATC has received a number of awards from DISC and is not being deliberately excluded from competition.

DISC did receive UATC's quotations on the remaining 10 procurements. UATC was the low offeror on nine of these procurements. DISC states that UATC did not receive award on the nine procurements because UATC, a nonmanufacturer, failed to submit the data required by clause L06. The tenth procurement was awarded to Fastner Depot because it submitted the low quotation.

The protester does not dispute the agency's position that it did not supply the required data with its quotations, but instead challenges the propriety of clause L06. UATC contends that the clause unnecessarily restricts competition to Original Equipment Manufacturers (OEM's) and authorized dealers.

We recognize that recent investigations of Department of Defense spare parts procurements, including DLA's, have revealed instances in which competition has been unnecessarily restricted. See House Committee on Government Operations, "Failure to Implement Effectively the Defense Department's High Dollar Spare Parts Breakout Program is Costly," H. Rep. No. 512, 98th Cong., 1st Sess. (1983). However, the protester's contention that it was unnecessary to include clause L06 in the solicitations is untimely. This argument involves an alleged defect in the solicitations which was apparent from the face of these solicitations. Therefore, under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), UATC was required to file its protest prior to the closing dates for the receipt of quotations. Since UATC did not file its protest until after the awards, this argument is untimely and will not be considered. M-F Services, Inc., supra. Moreover, UATC has failed to offer any proof to refute DISC's contention that all of the spare parts procured under these solicitations were critical parts that must necessarily be restricted. See Mercer Products & Manufacturing Co., Inc., B-210536, October 12, 1983, 83-2 CPD 449. This ground of protest is accordingly dismissed. UATC's protest against the award of a contract to Fastner Depot is denied because UTAC was not the low offeror.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States