



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Varityper
File: B-224367
Date: August 12, 1986

DIGEST

1. Protest that specification restricts competition concerns an impropriety apparent from the face of the solicitation and, therefore, is dismissed as untimely where not filed before the bid opening date. Moreover, even if protester's pre-bid opening expression of concern to the contracting agency is considered a protest, firm's receipt of solicitation amendment that clearly indicated agency's adverse position on the matter constitutes knowledge of initial agency action, so that protest to the General Accounting Office, filed more than 10 working days later, is untimely on that basis as well.
2. Where bidder offers to supply equipment that does not comply with the material terms of the solicitation, the bid properly was rejected as nonresponsive.
3. Protest that awardee's bid was nonresponsive is denied where the awardee offered to supply equipment that met the requirements of the solicitation.

DECISION

Varityper protests the award of a contract to Itek Graphix Corp. under invitation for bids (IFB) No. DAAL02-86-B-9539, issued by the Department of the Army to procure a phototypesetting equipment system. Varityper contends that the specifications were unduly restrictive, that its own bid was rejected improperly, and that Itek's bid was nonresponsive.

We dismiss the protest in part and deny it in part.

The IFB, issued on March 29, 1986, requested a phototypesetting equipment system with specified features. On April 3, Varityper wrote to the Army suggesting that the specifications restricted competition in that they required dual 5-1/4 inch disk drive storage and red-sensitive paper, and included what Varityper believed was an unclear specification regarding automatic processing. Varityper stated that it would file a protest if the specifications were not amended. In response, the Army amended the IFB by deleting the requirement for red sensitive paper and by

requiring the photsetter to be a digital design. The Army, however, determined that the requirement for 5-1/4 inch disk drives was a legitimate minimum need and therefore did not change it.

Bid opening was held on April 30, and Varityper and Itek submitted bids priced at \$18,500 and \$21,875, respectively. On June 12, the Army notified Varityper, which had acknowledged the IFB amendment, that despite its lower cost its bid was rejected as nonresponsive because Varityper offered to provide a system with 8-inch disk drive storage rather than 5-1/4 inch disk drives, as required by the IFB. The Army awarded the contract to Itek on June 12, and Varityper filed its protest with this Office on June 20.

Varityper first argues that the requirement for 5-1/4 inch disk drives was unduly restrictive of competition. This protest basis is untimely. Our Bid Protest Regulations require that a protest based upon an alleged impropriety in a solicitation that is apparent prior to bid opening be filed before that date. 4 C.F.R. § 21.2(a)(1) (1986). Since Varityper's protest against the disk drive requirement was not filed until after award, it is untimely and will not be considered on the merits. Moreover, even if we consider Varityper's April 3 letter to the Army as a protest, under our Regulations the firm had only 10 working days after the agency's initial adverse action to protest to our Office. 4 C.F.R. § 21.2(a)(3). Such action here was receipt of the solicitation amendment which, although it addressed certain of Varityper's concerns, did not change the disk drive requirement despite the firm's complaint. See 4 C.F.R. § 21.0(e) (which explains that adverse agency action means any action or inaction by a contracting agency that is prejudicial to the position taken in a protest filed at that level); SelecTech Services Corp., B-219687, Oct. 22, 1985, 85-2 C.P.D. ¶ 439. Consequently, the protest, filed in our Office substantially after the 10-day period expired, is untimely on this basis as well.

Varityper next protests that its bid should not have been rejected as nonresponsive because an 8-inch disk drive meets the Army's needs. This protest basis is without merit.

The Army reports that it specified 5-1/4 inch disk drives basically for two reasons. First, with the automated data processing industry moving away from 8 inch drives, and since the Army expects the equipment being purchased to be used for many years, the agency wanted to be sure of buying equipment that will be adaptable for the future in terms of hardware and software availability. Second, because all of the using activity's equipment utilizes 5-1/4 inch disk drives, the purchasing and stocking of future supplies would be streamlined.

To be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation. Repco, Inc., B-221286, Mar. 12, 1986, 86-1 C.P.D. ¶ 245. Since Varityper, instead of pursuing a timely protest upon receipt of the IFB amendment, bid a noncompliant system that would not meet all the Army's needs, the agency properly rejected the bid as nonresponsive.

Finally, Varityper asserts that Itek's bid should be rejected as nonresponsive because Itek offered to supply a system that uses red-sensitive paper, whereas the IFB required the system to use resin-coated paper. Varityper does not dispute the Army's response, however, that while the paper used by the Itek system is red-sensitive it is also resin-coated as required by the solicitation. Itek's bid therefore was responsive. C-R Control Systems, Inc., B-220017.2, Feb. 14, 1986, 86-1 C.P.D. ¶ 162.

The protest is dismissed in part and denied in part.

for Seymour E. Fros
Harry R. Van Cleve
General Counsel