



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ballantine Laboratories, Inc.
File: B-224232
Date: December 4, 1986

DIGEST

1. Protest of alleged improprieties in a solicitation for two-step sealed bidding is untimely where alleged improprieties were apparent prior to bid opening, but the protest was not filed with the contracting agency or the General Accounting Office until after bid opening.
2. Where agency rebuts an issue raised in the initial protest and the protester fails to respond to the agency's rebuttal in its comments to the agency report, the issue is deemed abandoned.

DECISION

Ballantine Laboratories, Inc. (Ballantine), protests the award of a contract to Wavetek San Diego, Inc. (Wavetek), under invitation for bids (IFB) No. DAAB07-86-B-N094, issued by the United States Army Communications-Electronics Command, Fort Monmouth, New Jersey. The IFB is the second step in a two-step sealed bid procurement for the multiyear acquisition of signal generators. Ballantine objects to the solicitation's multiyear and option provisions, and contends that Wavetek's bid was unbalanced and should have been rejected as nonresponsive.

We dismiss the protest.

The IFB, as amended, solicited bids by August 26, 1986 for the first program year basic requirement of 900 generators, Alternate "A," and a total multiyear basic requirement of 3600 generators for 3 program years, Alternate "B." The IFB provided that the Army may exercise options to increase the quantity by up to 200 percent each program year, and that bids would be evaluated by adding the total price for the option quantity to the total price for the basic quantity. Award would be based on the low bid for the first program

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year and/or for the total multiyear low bid, whichever was more advantageous to the government. Wavetek was determined to be the lowest evaluated bidder for the total multiyear requirement and was awarded a contract on September 26, 1986.

By letter to the Army dated September 8, 1986, Ballantine raised issues about the IFB's compliance with the Federal Acquisition Regulation's provisions on multiyear contracting, contended that Wavetek's Alternate "B" bid was unbalanced, and asked that it be awarded the contract for Alternate "A." Ballantine filed its protest in our Office on September 26, 1986.

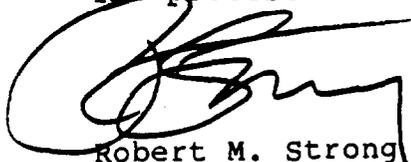
Ballantine contends that the solicitation contains excessive options, that the inclusion of options in the evaluation factors for award was improper, and that the solicitation violates regulations governing multiyear contracting. These protest issues concern alleged improprieties in the solicitation. Improprieties apparent under step-two of a two-step procurement must be protested prior to the time set for the opening of bids. See Beech Aerospace Services, Inc., B-220078, Dec. 20, 1985, 85-2 C.P.D. ¶ 694; 4 C.F.R. § 21.2(a)(1) (1986). Since Ballantine's protest concerning the IFB's option provisions was not filed with our Office until after the August 26, 1986, bid opening, these protest issues are untimely and not for consideration on the merits. See AC Inc., B-215993, Dec. 31, 1984, 85-1 C.P.D. ¶ 4. Ballantine's protest to the Army about the IFB's multiyear contracting provisions was also untimely since it was not filed until after bid opening. Where, as here, a protest is first filed with the contracting agency, a subsequent protest to our Office will be considered timely only if the initial protest was timely. 4 C.F.R. § 21.2(a)(3). Since Ballantine's initial protest to the agency was not timely filed, this portion of its protest subsequently filed with our Office is also untimely and will not be considered. Sparklet Devices, Inc., B-223089, May 22, 1986, 86-1 C.P.D. ¶ 482.

Ballantine also protested that the awardee's bid was unbalanced and should have been rejected as nonresponsive. The Army responded in its report to this allegation and Ballantine did not rebut that part of the Army's report. Therefore, we consider Ballantine to have abandoned this additional protest ground. Hamilton Sorter Co., Inc., B-220253, Nov. 22, 1985, 85-2 C.P.D. ¶ 592.

Ballantine also has requested a conference to discuss the merits of its protest. Since we are not considering

Ballantine's protest on the merits, such a conference would serve no useful purpose. Logus Manufacturing Corp., B-216775, Jan. 8, 1985, 85-1 C.P.D. ¶ 25.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name below.

Robert M. Strong
Deputy Associate General Counsel