



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Power-Trol, Inc.
File: B-227954
Date: October 5, 1987

DIGEST

1. A protest of a solicitation provision, requiring submission of a first article inspection report and prescribing standards for waiving submission of such a report, is dismissed as untimely where it was not filed prior to the closing date for receipt of initial proposals.
2. Protest of agency decision to waive first article requirements for competitor is dismissed as untimely where not filed within 10 working days after protester received information from agency that competitor had received award based on line items indicating that first article testing had been waived.
3. Protest of agency's decision not to waive a first article testing requirement is denied where firm has not produced the item for an extended period of time--12 years.

DECISION

Power-Trol, Inc. protests the award to another offeror under request for proposals (RFP) No. F09603-87-R-6313, issued by the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, for a quantity of infrared heat treat system for use in stress relieving and heat treatment of metals used in aircraft. The Air Force rejected Power-Trol's offer as technically unacceptable and, after waiving first article testing, awarded a contract to Research, Inc., the low and only remaining technically acceptable offeror.

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

The solicitation sought responses on the basis of alternate proposals: alternate A, requiring a first article and test report and alternate B, with first article and test report

report and alternate B, with first article and test report not required. Under the terms of the solicitation, the procuring agency reserved the right to waive first article test requirements and select alternate B in the event award was made to a current or prior producer of articles "identical or similar" to those required by the solicitation. Offerors were advised that \$400 would be added to proposal offers, to cover the agency's costs of first article review. The procuring agency retained the right to determine whether articles previously supplied by an offeror were "similar" to the systems required under the solicitation. The RFP further provided that award was to be made on the basis of lowest evaluated technically acceptable offers and was to include consideration of first article testing, transportation costs and any offered discount.

The solicitation was issued on February 9, 1987, and amended to set a closing date of March 20. Power-Trol and Research submitted the only offers. For purposes of obtaining first article waiver, Research identified two prior contracts, completed in 1984 and 1985. Power-Trol identified a 1975 contract for a similar item provided by a predecessor corporation, Time-Trol, Inc.

The agency's technical evaluation found both offers acceptable, and on May 4, 1987, the contracting officer asked for best and final offers to be submitted by May 13.

On May 12, Power-Trol responded with a letter taking exception to portions of the specifications requiring 120 volt heaters and suggesting that since 2 heater modules were being supplied with a rated voltage of 240 volts, the other 6 heater modules being supplied could also be provided with a rated voltage of 240 volts. Power-Trol claimed that by using one voltage for all heater modules, a contractor could eliminate "the costly additional circuitry and equipment needed to provide two different output voltages." Accordingly, in its best and final offer, Power-Trol reduced its price from its initial offer.

The contracting officer referred Power-Trol's technical exceptions and the first article waivers to her technical advisers. The technical advisers determined that in view of the wide variation in areas of metal needing treatment, different voltage heaters were needed. Power-Trol's technical proposal was determined unacceptable. Subsequently, first article was waived for Research.

On June 10, 1987, award was made to Research, and by letter of that date, Power-Trol specifically was advised that award had been made to Research for items under alternate B.

On June 23, Power-Trol acknowledged the notification of award, but observed that award had been made at a higher price than Power-Trol's best and final prices. Power-Trol requested a formal debriefing pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.1003 (1986). Power-Trol advised the agency of its intention to file a protest should the debriefing reveal any facts so warranting.

By letter of July 2, 1987, in response to the request for debriefing, the contracting officer advised Power-Trol that it had been denied a waiver of first article. Her letter set out the facts that with the addition of first article evaluation costs (\$400, in accordance with the solicitation and transportation costs, the total evaluated price of Power-Trol's offer had been \$678,237.30 versus \$672,556.50 for Research. In addition, the contracting officer advised Power-Trol that its final proposal had been deemed technically unacceptable.

By letter of July 9, Power-Trol advised that based on the information supplied, it was lodging a protest on the ground that its offer was not properly evaluated. On July 12, Power-Trol supplied specific grounds for its protest.

First, Power-Trol objects to the contracting officer's refusal to waive the first article requirement for Power-Trol as well as the granting of a waiver to Research, Inc. Power-Trol also raises an objection to the solicitation provisions regarding first article testing and waiver. Lastly, Power-Trol argues that a new round of best and final offers is required inasmuch as an agency buyer had contacted Power-Trol concerning the exceptions taken in Power-Trol's final offer regarding the requirement for 120-volt heater modules. Power-Trol characterizes this contact as "discussions," necessitating a new round of best and final offers.

Power-Trol's objection to the solicitation provision requiring first article testing and providing for waiver of that testing constitute a protest against an alleged solicitation impropriety which, under our Bid Protest Regulations, must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1987) Power-Trol's protest on that ground is untimely since it was not filed until after the March 20, 1987, closing date. In commenting on the agency report, Power-Trol concedes that its protest is untimely on this issue but requests that we review this matter pursuant to 4 C.F.R. § 21.2 (c) either "for good cause shown" or as raising an issue significant to the procurement system.

We will not consider an otherwise untimely protest unless the protest raises an issue of first impression that would have widespread significance to the procurement community. Diversified Computer Consultants, B-225714.2, June 19, 1987 87-1 CPD ¶ 613. We previously have addressed this particular issue. See Homexx International Corp., B-192034, Sept. 22, 1978, 78-2 CPD ¶ 219. The protest issue does not meet this standard, and we therefore will not consider it.

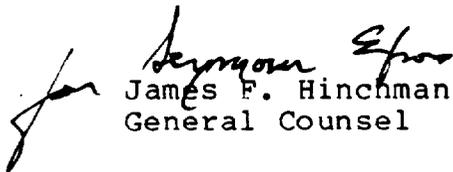
Power-Trol's objection to the waiver granted Research is also untimely as protests based on grounds other than solicitation improprieties must be filed not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). The contracting officer's letter of June 10 notified Power-Trol that Research had been awarded items 0001AH, 0001AK and 0001AL all of which constituted award on the basis of alternate B, first article test report not required. The protester acknowledges that it received this letter on June 19; although the protester expressed dissatisfaction in several letters as to the evaluation of its own offer, it did not question Research's eligibility for waiver until its formal protest of July 13, well beyond the 10 working days deadline set by our Bid Protest Regulations.

Power-Trol argues that the Air Force improperly refused to waive first article testing for its product and, had the first article testing been waived, it would have been the low offeror. In this regard, we have consistently held that an agency's decision to waive or not to waive first article testing for a particular offeror is subject to question only where it is shown to be unreasonable. Honeycomb Company of America, B-225685, June 8, 1987, 87-1 CPD ¶ 579. The FAR, 48 C.F.R. § 9.303 (1986), states that although a contractor may have previously furnished a product to the government, first article testing may be appropriate when production has been discontinued for an extended period of time. The Air Force states that the protester's last contract for similar systems was 12 years ago, that the pertinent specifications have changed significantly over that time and that the protester itself has become a different legal entity (despite retention of its staff). Regarding the latter issue, we have held that the contract history of a predecessor company may qualify a successor company for waiver of first article testing based on the similarities of the companies' manufactured products, facilities, management, staff, production and quality control processes. 64 Comp. Gen. 507 (1985); L. L. Rowe Co., B-220973, Feb. 27, 1986, 86-1 CPD ¶ 204. Power-Trol contends that the only changes from the 1975 specification concern the deletion of ammeters, deletion of the size of caster wheels and the changing of applicable reference specifications from JIC to

NEMA, which is a current industry standard. However, assuming, arguendo, that specification changes were minor and that organization and personnel remained relatively intact despite the change in corporate entity, we cannot find the contracting officers refusal to waive first article requirements unreasonable, in view of the extended period of time since Power Trol or its predecessor has produced the systems in question. FAR, 48 C.F.R. § 9.303; L. L. Rowe Co., B-220973, supra.

Since we find that the Air Force properly denied Power-Trol's request for waiver of first article testing, Power-Trol is not the low evaluated offeror and we need not consider the Air Force's rejection of Power-Trol's best and final offer as technically unacceptable, since Power-Trol is not in line for award in any event.

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


James F. Hinchman
General Counsel