

Beukard - PL



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Motors Corporation
File: B-228388
Date: October 23, 1987

DIGEST

1. The General Accounting Office does not consider whether a bidder qualifies as a manufacturer or regular dealer under the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to review by the Small Business Administration if a small business is involved and the Secretary of Labor.
2. A protest against alleged solicitation improprieties is untimely where filed after the closing date for receipt of initial proposals.

DECISION

General Motors Corporation, Allison Gas Turbine Division, protests the award of a contract to any firm other than Allison under solicitation No. F41608-87-R-4129 (4129) issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas.

We dismiss the protest.

The procuring activity issued three solicitations for cage assemblies, Allison Part No. 6873603, a part of the bearing assembly in the main power train of the T-56 engine. These solicitations were issued between September 1986 and January 1987. Solicitation 4129 was issued December 26, 1986. In July 1987, Allison asserts that it concluded negotiations on the three solicitations.

On September 24, 1987, Allison avers that it received notice addressed to Allison and to Sierra Tech from the contracting activity that solicitation 4129 was being reopened, that the three previous solicitations were, in effect, being consolidated under 4129, and that best and final offers were due October 5, 1987. Prior to this notice, Allison was unaware that there was another offeror. Moreover, it considered solicitation 4129 as somewhat similar to a "brand name or equal" solicitation in which it was clearly the name brand supplier. Allison filed this protest October 2

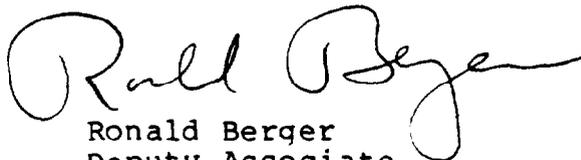
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alleging that the awardee, Sierra Tech, does not qualify as a manufacturer or a regular dealer for the part and that, as to Sierra Tech, the solicitation is defective because it does not provide sufficient quality assurance provisions.

Allison first contends that Sierra Tech does not qualify as a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act and, therefore, is not eligible for award. The General Accounting Office, however, does not consider whether an offeror so qualifies. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration, if a small business is involved, and by the Secretary of Labor. See 4 C.F.R. § 21.3(f)(9) (1987); Sparklet Device, Inc., B-223089, May 22, 1986, 86-1 CPD ¶ 482.

Allison's second ground of protest -- that the solicitation is deficient in that adequate standards for alternate offers are lacking -- is untimely. Our bid protest regulations require that a protest against alleged solicitation defects apparent prior to the closing date for receipt of initial proposals be filed prior to that time. 4 C.F.R. § 21.2(a)(1). Based on the information provided by Allison, the closing date for receipt of initial proposals occurred well in advance of October 2, the date on which Allison filed its protest. And while it may be true that Allison did not know that there was another offeror on the closing date for receipt of initial proposals, the alleged solicitation impropriety was apparent in December 1986. Allison concedes that the express language of the solicitation provided for alternate offers and for the submission of data that could be used to determine acceptability of alternate items. Thus, the absence of what Allison perceives to be needed standards for evaluating alternate offers was apparent from the solicitation. Since Allison failed to raise this issue prior to the closing date for receipt of initial proposals, the protest is untimely on this matter.

The protest is dismissed.



Ronald Berger
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General Counsel