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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ITT Cannon

File: B-228521

Date: November 5, 1987

DIGEST

Where alleged improprieties in a solicitation are not apparent until the time when the protester receives a debriefing, failure on the part of the protester to file its protest within 10 working days of that debriefing renders the protest untimely.

DECISION

ITT Cannon protests the rejection of its proposal under request for proposals (RFP) No. DAAB07-87-R-J054, issued by the Army Communications-Electronics Command for tactical fiber optic cable assemblies. Cannon argues that its proposal was improperly rejected and that certain provisions of the solicitation were unduly restrictive. We dismiss the protest as untimely.

The solicitation, calling for the submission of technical proposals, was issued on March 16, 1987, as the first step in a two-step sealed bid procurement. Technical proposals were to be submitted by April 30, and the protester was notified by letter of August 13 that its proposal had been rejected as technically unacceptable. This letter stated that Cannon's proposal was unacceptable because of an unacceptable technical approach which had a high risk of not meeting the solicitation performance requirements. The letter further indicated that Cannon's proposal failed to provide definitive performance characteristics and relevant test and supporting documentation for its products. The Army also found that Cannon failed to demonstrate the capability to meet the solicitation requirements and also proposed untried and unproven products. Finally, the Army noted technical inconsistencies in the information contained in Cannon's proposal.

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Cannon, dissatisfied with the statement of technical unacceptability contained in the August 13 letter, requested a debriefing from the agency. On September 3, agency contracting officials met with representatives of Cannon to discuss the technical deficiencies found in the firm's proposal. At this debriefing, some 14 specific areas of Cannon's technical proposal which were deemed by the agency to be unacceptable were discussed. The deficiencies noted, although more specific, were basically the same ones outlined in the Army's August 13 letter. The Army noted that certain products proposed did not meet solicitation requirements, that required test data was inadequate or irrelevant to the requirements or contradictory. The protester, allegedly still unclear as to the bases of rejection of its proposal, requested that the agency provide it with a further written statement regarding the technical deficiencies found in its proposal. By letter dated September 30, the agency restated the technical deficiencies discussed at the September 3 debriefing apparently in greater detail than had been previously discussed. The protester then filed a protest with our Office on October 13.

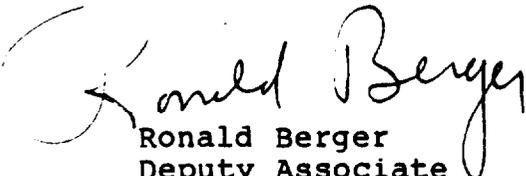
Cannon's basis of protest is that the Army restrictively interpreted the RFP requirement for supplying test data. Cannon states that it interpreted this requirement as requiring test data on equipment similar to what the specifications called for, but that the Army interpreted the requirement to mean test data only on the solicited equipment. According to Cannon, only one source has successfully produced the required item and thus only one source could meet the requirement as interpreted by the agency. Cannon objects to the restrictive interpretation and argues that it was improperly found technically unacceptable on the basis of the improper interpretation. Alternatively, it argues that it was denied sufficient proposal preparation time if the Army's interpretation of the evaluation criteria is correct.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), to be timely, protests of solicitation improprieties apparent prior to the closing date for receipt of initial proposals must be filed before closing. However, Cannon indicates that the alleged solicitation improprieties were not apparent to Cannon until the rejection of Cannon's proposal and subsequent debriefing. Indeed, the protester states in its submission that "[a]s a result of the [September 3] meeting, ITT Cannon . . . strongly believe[s] that the evaluation criteria . . . was [sic] contrary to the integrity of the procurement system. . . ." Assuming that Cannon's protest against the agency's solicitation evaluation criteria was only apparent from information received at

the debriefing Cannon's protest is nonetheless untimely under 4 C.F.R. § 21.2(a)(2), which requires a protester to file within 10 days of when it knew or should have known its bases of protest. Cannon did not do so and thus its protest is untimely filed.

Additionally, to the extent that Cannon's protest amounts to an allegation that its proposal was improperly rejected, we believe that it was also untimely filed, having not been filed within 10 days of the Army's letter of August 13 or the September 3 debriefing in accordance with 4 C.F.R. § 21.2(a)(2). In our opinion, the bases for rejecting Cannon's proposal were provided to Cannon at the latest at the debriefing on September 3. The Army's September 30 letter, while perhaps providing more detail with respect to those bases, did not raise any essential new grounds upon which Cannon may have based its protest. See GTE Telecom, Inc.--Reconsideration, B-222459.4, May 14, 1987, 87-1 CPD ¶ 505.

The protest is dismissed.


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