

Wolcott



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Memorex Corporation
File: B-230904
Date: May 19, 1988

DIGEST

Where a protester fails to timely challenge an agency determination that its proposal was unacceptable for failure to comply with one of the request for proposal's mandatory requirements, its protest raising other issues is not for consideration, since, even if the General Accounting Office agreed with the protester's arguments, the protester would not be eligible for award.

DECISION

Memorex Corporation protests that its proposal was improperly evaluated by the National Aeronautics and Space Administration (NASA) pursuant to request for proposals (RFP) No. 2-32899. We dismiss the protest.

The RFP was issued on March 20, 1987, the closing date for submission of proposals was April 3. Section C of the RFP listed six mandatory requirements and seven optional features against which proposals were to be evaluated. Section M.2 of the RFP stated: "Proposals . . . must meet all mandatory requirements set forth in section C."

NASA evaluated the proposals submitted and concluded that Memorex' proposal did not comply with one of the mandatory requirements, that is, the requirement that "data shall not be lost due to any succession of up to three power failures whose combined duration is less than 3 hours in a 24 hour period." By telegram dated February 26, 1988, NASA advised Memorex that Imperial Technology had been selected for final negotiations leading to award since Imperial's proposal (which had received the highest technical score and offered the lowest price) offered the greatest value to the government. Contrary to Memorex's contention, no discussions were conducted prior to Imperial's selection; award was based on initial proposals.

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On March 24, 1988, NASA conducted a debriefing of Memorex. NASA states that at this meeting Memorex was advised that its proposal did not meet one of the solicitation's mandatory requirements and was, therefore, unacceptable.

On March 31, Memorex filed its protest with our Office. Memorex protested that "certain evaluated optional features . . . were inconsistently evaluated for the Memorex product capabilities as compared to the Imperial Technology product." (Emphasis added.) The protester enumerated each of the seven optional features called for by the RFP and presented arguments as to why Memorex's proposal should have received higher scores for each of those optional features. Nowhere in its protest did Memorex contend that NASA had erred in determining that its proposal failed to meet the mandatory requirement.

In its administrative report to our Office, NASA reiterated that Memorex's proposal did not meet all of the mandatory requirements and, therefore, was unacceptable. In its comments on the agency report filed in our Office on April 13, Memorex, for the first time, argues that its proposal did, in fact, comply with the mandatory requirements. However, Memorex does not dispute NASA's assertion that it was advised during the March 24 debriefing that its proposal failed to meet one of the mandatory requirements.

Our Bid Protest Regulations require that protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Our Office strictly applies this timeliness requirement in order to permit presentation of competing arguments and expeditious resolution of protests without undue disruption to the government's procurement process. Amertech Industries, Inc., B-229498, Nov. 9, 1987, 87-2 CPD ¶ 469.

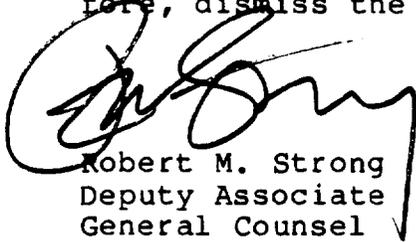
Memorex was advised on March 24 that its proposal was unacceptable due to its failure to comply with a mandatory requirement. Nonetheless, it failed to raise this issue with our Office until it filed its comments on NASA's report on April 13--more than 10 working days after it was so advised. Accordingly, Memorex's arguments concerning the acceptability of its proposal with regard to the mandatory requirements are untimely and will not be considered by our Office. Aztek, B-229788, Dec. 30, 1987, 87-2 CPD ¶ 648.

Since Memorex's proposal was determined unacceptable due to its failure to comply with one of the mandatory requirements, we will not consider Memorex's protest concerning NASA's evaluation of the optional features, since, even if we agreed with Memorex's arguments, it would not be eligible

for contract award due to NASA's determination that its proposal was unacceptable. See e.g. Freedom Elevator Corporation, B-228887, Dec. 7, 1987, 87-2 CPD ¶ 561.

The protest is dismissed.

In its protest, Memorex requested the production of certain documents concerning NASA's evaluation of proposals. Since Memorex's protest is dismissed, we conclude that the requested documents, pertaining to the evaluation of Memorex's optional features, are not relevant and, therefore, dismiss the request.



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