



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Devices, Inc.
File: B-232651
Date: December 20, 1988

DIGEST

1. Protest that award improperly was made on basis differing from that set forth in the solicitation is denied where contract in fact incorporates the same specifications contained in solicitation, and the agency represents that no waivers or deviations from the specifications have been requested or granted since award.

2. New and independent grounds of protest first raised in protester's comments on the agency's report are dismissed as untimely; under Bid Protest Regulations, protest of alleged improprieties apparent on the face of the request for proposals should have been filed by closing date for receipt of proposals, and protest that awardee's price was unreasonable had to be filed within 10 working days after protester knew of award price.

DECISION

Consolidated Devices, Inc. protests the award of a contract to King Nutronics Corporation, under request for proposals (RFP) No. N00123-87-R-1160, issued by the Department of the Navy for semiautomatic torque and force calibrators, used in the calibration of tools. The protester principally argues that the contract was awarded on a basis different from that set forth in the solicitation.

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

The agency initially argues that because the protester did not submit a timely offer, the firm is not an interested party to challenge the award of the contract. In this regard, the record shows Consolidated's proposal was rejected as late because it was received 6 minutes after the deadline for receipt of initial proposals. The Navy is correct that, in general, we will not consider a party's interest to be sufficient where that party would not be

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eligible for award if the issues raised were resolved in its favor. National Medical Homecare, B-229577, Jan. 12, 1988, 88-1 CPD ¶ 21. Here, however, the King Nutronics contract could be terminated and the requirement recomputed (since no other offers were received), if we agreed with Consolidated that the award was improper. Since Consolidated competed by submitting a proposal (albeit a late one), Consolidated's interest as a potential competitor on such a recompetition, if the protest is successful, is sufficient for it to be considered an interested party. Singleton Contracting Corp., B-211259, Aug. 29, 1983, 83-2 CPD ¶ 270.

The protester contends that the Navy "in negotiations with King Nutronics substantially changed and modified the specifications." The basis for the protester's allegation is an alleged statement by King Nutronics in a letter to the Air Force concerning a subsequent Air Force procurement that the item supplied in that procurement meets the same requirements as the contract awarded by the Navy here. According to the protester, the subsequent procurement involved different specifications, so it believes this alleged statement by King Nutronics indicates that the Navy must have materially changed the specification in making award to King Nutronics. We find no merit to the protest.

We have reviewed the signed contract dated September 1, 1988, and find no change in the specifications; the detailed specifications for the calibrators have been incorporated into the contract as they appeared in the RFP. Also, the agency has submitted a statement from the contracting officer's technical representative that: (1) the contract awarded was for calibrators with the same specifications required by the solicitation here; and (2) since contract award, the awardee has not requested any deviations or waivers from the RFP specifications, and none has been granted. We thus find no reason to question the award here.

The protester, in its conference comments filed on November 14, for the first time argues that: (1) the specifications were ambiguous and did not reflect the government's minimum needs, because the agency did not define the minimum allowable measurement uncertainty for torque, force, or tension output; and (2) the award was at an unreasonable price, as evidenced by a prior award at \$19,500 per unit, \$17,625 less than the \$37,125 per unit award price here.

These arguments are untimely and will not be considered. Each new protest ground must independently satisfy the timeliness requirements of our Bid Protest Regulations, which do not contemplate the piecemeal presentation or

development of protest issues. See Chesapeake & Potomac Telephone Co., B-224228, Feb. 5, 1987, 87-1 CPD ¶ 120. Our Regulations require that a protest based on alleged improprieties in an RFP that are apparent before the closing date for receipt of initial proposals be filed by that date, 4 C.F.R. § 21.2(a)(1) (1988), and that other protests be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Thus, under the former rule, the protest challenging the adequacy of the specifications, which should have been apparent on the face of the solicitation, is untimely since it was not filed by the April 11 closing date. Likewise, the protest of the reasonableness of the awardee's price is untimely under the latter rule since, upon our inquiry, the contracting agency has advised that it disclosed the award price to the protester in the September 14 telephone conversation notifying the protester of award; since the allegation was not raised until considerably more than 10 working days after September 14, it will not be considered.

The protest is denied in part and dismissed in part.

for *Seymour E. Hinchman*
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General Counsel