



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Boonton Electronics Corporation

File: B-233436

Date: January 27, 1989

DIGEST

Protest that requirement should be resolicited because original proposals were lost by contracting agency, filed with General Accounting Office more than 7 weeks after protester knew the basis for its protest is untimely. Agency notification to the protester that all proposals had been lost and the issuance of an amendment to the solicitation requesting new proposals for a revised requirement provided sufficient notice of the protest grounds.

DECISION

Boonton Electronics Corporation protests the award of a contract to Hewlett-Packard Company under request for proposals (RFP) No. F41608-86-R-C698 issued by the Air Force for digital power meters. The Air Force lost all the initial proposals and Boonton argues that this loss requires that the subsequent award to Hewlett-Packard be terminated and a new solicitation issued.

The solicitation was originally issued on December 31, 1986, for an estimated quantity of 354 power meters conforming to a commercial item description. At the amended June 29, 1987 closing, the Air Force received two proposals, Boonton's and Hewlett-Packard's. Boonton's offer was low. Both offerors submitted the equipment samples required by the RFP and both samples were approved. In March 1988 the Air Force discovered that the file containing the proposals and related documentation was missing. The Air Force subsequently informed both offerors that the proposals had been lost. According to the Air Force, also during this time its requirements had changed significantly.

On June 14 the Air Force issued amendment No. 03 to the original solicitation. The amendment deleted the original solicitation form and replaced it with a new one which increased the estimated quantity to 700, deleted a 5-year

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warranty requirement and the commercial item description, and added several new Federal Acquisition Regulation (FAR) clauses. The amendment stated that it constituted an "entire replacement of the original solicitation." The amendment, which included a closing date of June 27, was synopsisized in the Commerce Business Daily. Boonton and Hewlett-Packard submitted proposals in response to the amended solicitation. Hewlett-Packard was the low offeror and the Air Force awarded it the contract. Boonton received written notice of the award on August 2, and on August 9 filed a protest with the agency which was denied by letter dated October 19. Boonton then filed this protest with our Office.

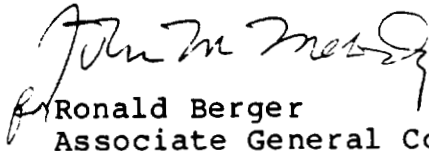
Boonton states that it was told in November 1987 by an agency contracting official that it had been awarded the contract and received repeated assurances of award through February 1988. According to Boonton, after it was told about the loss of the proposals, it provided copies of its proposal to the Air Force and subsequently submitted a new proposal in response to amendment No. 03. Boonton argues that the contract should be canceled and the requirement resolicited because there is no evidence that any offer other than Boonton's was acceptable under the original solicitation, its proposal may have been disclosed to other offerors, and the facts surrounding the loss of the original contract file are still in dispute since administrative proceedings have been brought against the contracting official who was responsible for the file.

The Air Force responds that Boonton's protest is untimely since it involves matters which should have been raised prior to the final June 27 closing date. The Air Force also maintains that, in any event, it conducted an investigation of the loss of proposals and found no evidence that the proposals were disclosed; even if they were disclosed, this would not have affected the price of the offerors' new proposals because of the significant increase in the quantity and the deletion of the warranty provision from the original solicitation.

We find Boonton's protest to be untimely. The firm was aware at the time that amendment No. 03 was issued that the agency proposed to remedy the problem of the lost proposals along with meeting its new expanded requirements by soliciting amended proposals. The firm chose to participate in the solicitation of the amended proposals and did not protest until it found that it would not receive the award. Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties 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); The Silcraft Corp., B-226605.2, Sept. 23, 1987, 87-2 CPD ¶ 290. Boonton knew in mid June when it received the amendment that award was to be made on the basis of the new proposals. It did not, however, file its protest with the agency until August 9, well after the 10 day time period.^{1/} Although the protester argues that it was not aware until it met with the new contracting officer on August 3, after award, that the file concerning this solicitation and 11 others was lost, and that administrative proceedings against the first contracting officer had been instituted, we do not believe this makes Boonton's protest timely. Boonton knew prior to that time that the original proposals had been lost and it was apparent from the solicitation that the Air Force intended to make award on the basis of the new proposals submitted in response to the amendment.

The protest is dismissed.


Ronald Berger
Associate General Counsel

^{1/} Protests that are filed initially with the contracting agency will not be considered by our Office unless the agency level protest is timely filed in accordance with our regulations. 4 C.F.R. § 21.2(a)(3).