



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Soltec Corporation--Request for
Reconsideration

File: B-234598.2

Date: March 28, 1989

DIGEST

Protester's contention that recording device specifications which require sprocket-type paper drive unduly restrict competition will not be considered since an alleged impropriety in a solicitation which is apparent prior to due date for receipt of proposals must be filed before that date. Fact that protester did not learn of alleged rationale for specifications until after the contract was awarded to its competitor does not excuse protester from its obligation to file a protest of the specification prior to the due date for receipt of proposals; a time when corrective action, if warranted, could be taken with the least disruption to the procurement.

DECISION

Soltec Corporation requests reconsideration of our dismissal of its protest concerning the award of a contract to Western Graphtec, Inc., under request for proposals (RFP) No. N60530-88-R-0406, issued by the Naval Supply Systems Command for oscillographic pen-type recorders. We have dismissed the protest because Soltec failed to file its protest, which was based on an alleged impropriety in the solicitation, prior to the closing date for the receipt of proposals. We affirm our dismissal.

Soltec protested the award to the other offeror at a higher price on February 17, 1989, alleging that the award had resulted from an RFP specification which unduly restricted competition in that it required a recorder with a sprocket-type paper drive which Soltec does not offer. Soltec argued

that this sprocket-drive requirement effectively limited the award to Western Graphtec. The protester maintained that its friction drive pinch roller recorder had been used successfully in similar field environments as described by the Navy and that the sprocket drive requirement had been removed from another RFP.

As we indicated in our dismissal notice of February 24, under our Bid Protest Regulations, 4 C.F.R. § 21. 2(a)(1) (1988), a protest based on an alleged defect in a solicitation, such as an erroneous or unduly restrictive specification, which is apparent prior to the date for receipt of proposals must be filed before that date. In this regard, we note that it is clear from the protest that the RFP specifically solicited a sprocket-drive recorder and therefore the basis of the protest should have been immediately apparent to Soltec upon its receipt of the RFP. Consequently, Soltec's arguments that the agency's specification was unduly restrictive of competition and that the agency's needs could be satisfied by the protester's product, which allegedly had performed successfully in similar environments, are untimely and will not be considered on the merits. Community Metal Products Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41; JoaQuin Manufacturing Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

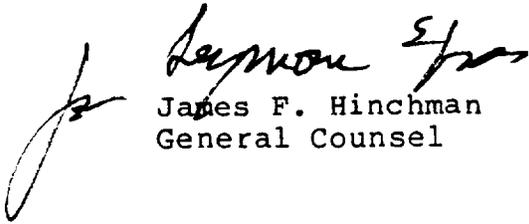
In its request for reconsideration, Soltec argues that its protest is not, in fact, based on apparent defects or improprieties. The protester contends that it was only after the award was made that it learned the "real reason"^{1/} for the specification requirement that made the solicitation unduly restrictive of competition.

Our Regulations, however, do not require that a protester know the rationale for a solicitation specification which it considers objectionable before it may file a protest. In this instance, the basis of the protest was apparent from the wording of the solicitation requirements. Furthermore, according to the protester, the requirement for sprocket-drive recorders in effect eliminated Soltec from the competition because its machine is of a different design. Therefore, it was incumbent on Soltec to file a protest of the requirement before proposals were due so that corrective

^{1/} The protester alleges that, after the contract was awarded, it learned in a conversation with the Navy's recorder operator that its product "was equal to or better than Western Graphtec's product," but that the operator was used to the placement of buttons and switches on the Western Graphtec product and preferred it for that reason.

action, if warranted, could be taken with the least disruption to the procurement process. There is no evident reason, and Soltec has brought none to our attention, as to why the protest could not have been filed prior to receipt of proposals. Diogenes Corp., B-229828, Jan. 13, 1988, 88-1 CPD ¶ 31. Because the protest was filed with this Office after the closing time for receipt of offers, the protest is untimely and not for consideration on the merits.

Accordingly, the dismissal is affirmed.


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General Counsel