



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wallace Coast Machinery Company

File: B-235608

Date: September 15, 1989

DIGEST

1. Protester's contention that pipe bending machine specifications requiring swing arm clamp mechanism unduly restrict competition will not be considered since alleged improprieties in a solicitation which are apparent prior to the due date for receipt of proposals must be filed before that date.
2. Contracting agency reasonably rejected technical proposal of offerors which knowingly proposed nonconforming product that did not meet solicitation requirement for swing arm style pipe bending machine.

DECISION

Wallace Coast Machinery Company protests the allegedly restrictive terms of request for proposals (RFP) No. N00600-88-R-4303, issued by the Department of the Navy for pipe bending machines, and the subsequent rejection of its initial and alternate proposals.

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

By way of background, on May 21, 1987, the Navy issued RFP No. N00600-87-R-3070 for the procurement of swing arm clamp type pipe bending machines. On July 17, 1987, Wallace filed an agency-level protest with the contracting officer, and subsequently filed a protest with our Office on September 1, 1987, challenging as restrictive the solicitation's requirement for current production models of swing arm clamp type pipe benders. Wallace argued that integral overhead clamp style benders should also have been acceptable to the Navy. As a result of the protest, the Navy, after reexamining its needs, canceled the RFP on October 8, 1987.

On September 15, 1988, the Navy issued two separate solicitations for the earlier canceled requirements, the

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first of which, RFP No. N00600-88-R-4302, sought three pipe benders with either the swing arm clamp or integral overhead clamp mechanisms. RFP No. N00600-88-R-4303, which is the solicitation that Wallace challenges here, required four swing arm clamp type pipe benders. On October 14, Wallace nevertheless submitted a proposal offering overhead clamp benders in response to this latter solicitation. The protester was notified by letter of February 2, 1989, that the Navy's initial technical evaluation found Wallace's proposal technically unacceptable, but capable of being made acceptable. The Navy reports that this finding was based upon Wallace's failure to offer a swing arm clamp style bender and its failure to provide descriptive literature to adequately demonstrate that it offered a current production model that met the solicitation's specifications.

On February 14, at the same time that Wallace submitted its best and final offer for its initial overhead clamp proposal, Wallace submitted for the first time an alternate proposal, as suggested orally by the contract negotiator, offering a swing arm clamp machine. The Navy subsequently notified Wallace that its initial and alternate proposals were rejected as unacceptable. This protest followed.

In its protest letter of May 17, the protester essentially challenges the solicitation's requirement for a "swing arm type clamp mechanism" as unduly restrictive. Wallace contends that the newer overhead clamp style pipe bending machine it initially proposed should have been acceptable under the terms of the RFP. The Navy states, however, that this protest issue is untimely. We agree.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989), a protest based on alleged improprieties in a solicitation, such as unduly restrictive specifications which are apparent prior to the date for receipt of proposals, must be filed before that date. In this regard, we note that the RFP specifically solicited a swing arm clamp and therefore the basis of the protest should have been immediately apparent to Wallace upon its receipt of the RFP. Soltec Corp.--Request for Reconsideration, B-234598.2, Mar. 28, 1989, 89-1 CPD ¶ 321. In fact, Wallace admits that when it first reviewed the RFP in September 1988, it found the solicitation's requirements in this regard to be unreasonably restrictive. Yet, Wallace failed to protest this specification until May 1989, approximately 7 months after the October 17, 1988, closing date. We have consistently recognized that it is incumbent upon an offeror to file a protest of allegedly restrictive solicitation requirements before proposals are due so that corrective action, if warranted, can be taken with the least disruption

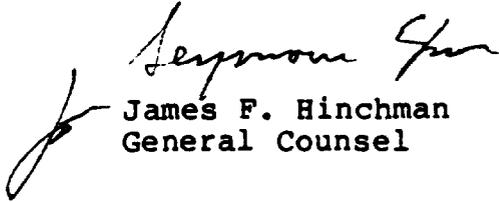
to the procurement process. Soltec Corp.--Request for Reconsideration, B-234598.2, supra. Furthermore, there is no evident reason, and Wallace has brought none to our attention, as to why the protest could not have been filed prior to receipt of proposals. Consequently, Wallace's argument that the agency's specifications were unduly restrictive of competition is untimely and will not be considered on the merits. See Community Metal Prods., Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41.

Wallace also challenges as erroneous the agency's determination that its initial proposal was technically unacceptable. In a negotiated procurement, a proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and therefore may not form the basis for award. CooperVision, Inc., B-231745, July 1, 1988, 88-2 CPD ¶ 3. The protester has offered no evidence to support its position that its initial proposal offered a model conforming to the RFP specifications. In fact, the record indicates, and the protester admits, that in initially offering an overhead clamp mechanism, Wallace offered a nonconforming product. It is fundamental that an offeror has an obligation to submit a proposal which fully complies with the terms and conditions of the solicitation and runs the risk of having its proposal rejected if it fails to do so. See Addsco Indus., Inc., B-233693, Mar. 28, 1989, 89-1 CPD ¶ 317. Here, the record clearly shows that the protester knowingly failed to comply with the RFP's material requirement for a swing arm clamp and thus, in our view, its proposal was reasonably found to be technically unacceptable. We therefore deny this protest ground.

Wallace similarly challenges the Navy's rejection of its alternate proposal which offered the swing arm type bender called for in the RFP. The Navy evidently rejected this alternate proposal as technically unacceptable since the protester failed to provide any descriptive literature or evidence of any kind that the offered product was a current production model as required under the RFP. We see no reason to review this determination, however, since Wallace's alternate proposal, which was submitted for the first time along with its best and final offer on its original proposal, was clearly a late offer of a different product which could not have been considered for award

despite the oral suggestion of the contract negotiator.^{1/} Moreover, there is no indication in the record to show that Wallace was unable to submit its alternate proposal prior to the initial closing date.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel

^{1/} In this regard, we have consistently held that a contractor's reliance on oral advice from the personnel of the procuring agency that an offeror failing to comply with the RFP's material requirements (here regarding the timely submission of proposals) would be considered for award is clearly unreasonable where that advice, as here, is inconsistent with the solicitation and procurement regulations. See Idaho Norland Corp., B-230598, June 6, 1988, 88-1 CPD ¶ 529.