

R. H. Back



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Soltec Corporation

File: B-237120.2

Date: October 23, 1989

DIGEST

1. Where prior protest of specification requirement was dismissed as untimely because not raised prior to the due date for receipt of proposals, General Accounting Office will not consider the same issue when reiterated by the protester in its subsequent protest of a proposed award to another offeror.
2. Protester is not an interested party to protest that agency should have permitted it to remedy two allegedly minor discrepancies in its proposal as to the equipment it offered since the awardee was lower in price than the protester and the protester has not indicated that modifying its equipment to meet the government's requirements would have resulted in a lower price.
3. Protest that agency should have issued an invitation for bids and not have conducted a procurement under negotiation procedures is untimely when not filed prior to the closing date for the receipt of proposals, since the use of negotiation was an alleged deficiency that was apparent on the face of the solicitation.

DECISION

Soltec Corporation protests the rejection of its offer and the proposed award of a contract to Prime Stock, under request for proposals (RFP) No. N00421-89-R-0288, issued by the Department of the Navy, Naval Air Test Center, Patuxent River, Maryland. This contract is for rack-mountable and portable "instrumentation strip-chart recorders" which have a sprocket paper feed, to reduce paper wander and slippage. Soltec contends that the requirement for sprocket drive operation improperly restricts competition, and that high speed paper transmission can be better handled by the "pinch roller" method which the protester uses. Soltec also contends that the Navy should have allowed it to make two

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minor technical changes in its offer, which would have increased the likelihood that its offer would have been found to be technically acceptable. Finally, Soltec argues that not enough time was available for the proper use of negotiated procedures and that, therefore, this solicitation should be canceled and the requirement resolicited through sealed bids.

Soltec had previously filed a protest with our Office in which it objected to the sprocket drive requirement in this solicitation as unduly restrictive of competition (B-237120). We dismissed that protest on September 26, 1989, as untimely because the protest was based on an alleged impropriety apparent in the solicitation but was not filed prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1989).

On the day after our dismissal notice was issued, Soltec received a letter from the Navy advising it of the proposed award to Prime Stock (for purposes of any small business size status protests) and that Soltec's proposal had been considered technically unacceptable because it did not satisfy three specification requirements, one of which was the sprocket paper feed mechanism. We have been advised by the Navy that Prime Stock's price was lower than Soltec's.

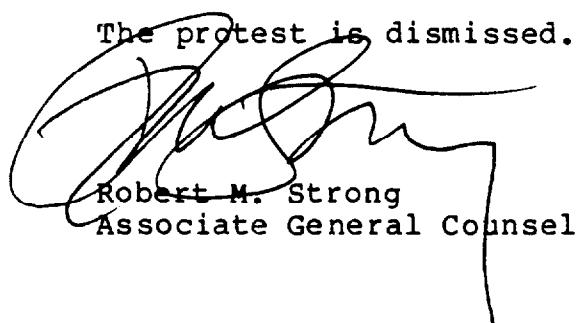
Upon receiving the Navy's letter, Soltec filed the current protest with our Office, in which it asserts three grounds. First, it reiterates its objection to the sprocket paper feed requirement. Since this issue is the same as that which we dismissed as untimely, it will not be considered further. Moreover, since Soltec was technically unacceptable because it did not comply with the sprocket requirement, it is not in line for award and, therefore, not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0, to maintain this protest with respect to the two other grounds of protest.

In any event, we note that Soltec is not an interested party under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a), to protest the failure of the Navy to conduct discussions with it, because it was not the lowest cost offeror and would not have been in line for award even if its protest were upheld and we determined that the Navy improperly did not allow Soltec to remedy the two technical discrepancies. Discount Mach. and Equip., Inc., B-230721, June 9, 1988, 88-1 CPD ¶ 550.

Finally, we also note that Soltec's contention that the Navy should cancel the solicitation and use sealed bid procedures is untimely. The protester clearly knew that the

Navy had decided to use competitive negotiation procedures when it received the RFP, yet did not raise the matter until after it was advised of the proposed award of the contract to another offeror. Because this allegation concerns an impropriety apparent from the face of the solicitation, to be timely it had to be filed with our Office prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(a)(1). Accordingly, Soltec's protest of this alleged solicitation defect, filed after the due date for proposals, is untimely. Record Press, Inc., B-228135, Sept. 16, 1987, 87-2 CPD ¶ 261.

The protest is dismissed.



Robert M. Strong
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