

Van Schaik



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arrowpointe Corporation--Request for
Reconsideration

File: B-237053.2

Date: October 30, 1989

DIGEST

Protest concerning alleged improprieties which were incorporated into solicitation by a negotiation letter which was filed after next closing date for receipt of proposals following incorporation was properly dismissed as untimely.

DECISION

Arrowpointe Corporation requests reconsideration of our decision to dismiss its protest of the award of a contract to Cadillac Gage-Textron under request for proposals (RFP) No. DAAE07-89-R-A146, issued by the U.S. Army Tank-Automotive Command (TACOM) for 13 armored personnel carriers. We dismissed Arrowpointe's protest on September 25, 1989, since it was untimely filed. We affirm our dismissal.

The solicitation included a purchase description which set forth the requirements the proposed personnel carriers were to meet. According to Arrowpointe's original protest, a cover letter dated August 15, 1989, transmitting a solicitation amendment which, among other things, called for best and final offers, referred to the Arrowpointe Dragoon 300 model and the Cadillac Gage V-150 model and stated:

"Notwithstanding the Purchase Description provided in the RFP, both vehicles in their current configuration have been determined to meet the Government's needs; and therefore either vehicle is acceptable in its current configuration even though the vehicle may be nonconforming to the original purchase description."

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The Army awarded a contract under the solicitation to Cadillac Gage based on its model V-150 at a unit price of \$149,075, which, according to Arrowpointe, was \$800 per unit less than Arrowpointe's price. After it was notified of the award, Arrowpointe protested to this Office on September 21.

Arrowpointe argued in its initial protest that the Cadillac Gage V-150 personnel carrier on which the award was based deviates materially from the specifications and quality assurance provisions in the original RFP purchase description. It also complained that the Army was required to notify Arrowpointe of its changed requirements and that, as a consequence of the Army's failure to do so, it had no opportunity to revise its proposal to meet the changed requirements and thus could not compete on an equal basis.

We dismissed Arrowpointe's protest since in our view, it concerned the contents of the August 15 negotiation letter described above and thus was required to be filed before the next closing date for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989).

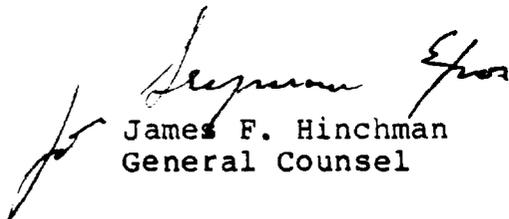
In its reconsideration request, Arrowpointe argues that we improperly dismissed its protest as untimely since the protest did not relate to a defect in the solicitation process but was based upon the noncompliance of the personnel carrier proposed by Cadillac Gage. Arrowpointe argues that it did not have notice until after the award that Cadillac Gage's personnel carriers did not meet the requirements of the purchase description. Further, Arrowpointe maintains that the August 15 letter did not place it on notice that the Army could award a contract for an item which did not meet the terms set out in the solicitation and states that the firm was not required to assume improper action by the agency and file a defensive protest.

It remains our view that Arrowpointe's protest concerned the negotiation process and should not have been filed after best and final offers were submitted and the awardee selected. In this respect, by stating "either vehicle [the Arrowpointe Dragoon 300 or the Cadillac Gage V-150] is acceptable in its current configuration even though the vehicle may be nonconforming to the original purchase description," the letter clearly informed the offerors that the agency had waived the terms of the RFP purchase description to the extent that the purchase description was not consistent with either the Arrowpointe Dragoon 300 or the Cadillac Gage V-150. Thus, Arrowpointe should have known upon receipt of that letter that the Army considered the Cadillac Gage configuration to be an acceptable basis

for award regardless of any noncompliance with the original purchase description. If Arrowpointe had any objection to that conclusion, it should have protested before the closing date for receipt of best and final offers. Recon Optical, Inc., B-232125, Dec. 1, 1988, 88-2 CPD ¶ 544.1/ Since Arrowpointe did not protest until after the award, the protest was untimely. 4 C.F.R. § 21.2(a)(1).

Finally, Arrowpointe requests that if the protest is untimely, we consider it under the "significant issue" exception to our timeliness regulations. 4 C.F.R. § 21.2(b). This provision states that where a protest raises issues that are significant to the procurement system, we may consider the protest even though it was not filed in a timely manner. The significant issue exception will be invoked only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. Leo Moran Constr., Co., B-229676, Mar. 11, 1988, 88-1 CPD ¶ 254. Arrowpointe's protest does not fall within this exception since the issue raised--whether, in this particular procurement, the contracting agency could by letter to the offerors waive the RFP purchase description to allow consideration of designated models--is not of widespread interest.

We affirm our dismissal.


James F. Hinchman
General Counsel

1/ Arrowpointe does not argue that it made any effort to find out the current configuration of the Cadillac Gage V-150 before submitting its best and final offer.