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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dennison Monarch Systems, Inc.

File: B-236264

Date: November 22, 1989

DIGEST

1. Protest alleging that solicitation contained ambiguity where the alleged ambiguity was apparent from the face of the solicitation is untimely when filed after the closing date for receipt of proposals. To the extent the protester contends ambiguity was not apparent, protester is also untimely where it was filed with our Office more than 10 days after protester was on notice of agency's interpretation of allegedly ambiguous clause.

2. Protest alleging that failure to timely provide test results on office furniture should not be grounds for rejection of offer, since furniture offered actually met test standards, is denied where offeror failed to submit test data with offer or within 15 days of notice of deficiency as required by the solicitation.

DECISION

Dennison Monarch Systems, Inc., protests the rejection of its offer under request for proposals No. FCNO-87-B701-B-3-30-89 issued by the General Services Administration (GSA) to obtain multiple award Federal Supply Schedule contracts to supply office furniture.

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

The solicitation was issued on January 19, 1989. It requested offers for seven items. This protest concerns only item No. 512-2, workstation clusters, defined in the solicitation as a fixed group of workstations arranged around a central point or core.

Under the general specifications for workstation clusters the solicitation provided:

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"Panels and panel supported components shall be tested in accordance with the requirements of the Business and Institutional Furniture Manufacturer's Association standard PS-1-1984. The solicitation also provided that representative items shall be selected for testing based on worst case situations (i.e., the deepest and widest worksurface or shelf)."

The solicitation cautioned offerors to fully review the testing requirements and to submit complete test reports with their offer. It stated that offerors would have 15 calendar days from receipt of the agency's written notification of deficiencies to demonstrate full compliance with the solicitation's technical requirements. It also provided "Failure to demonstrate full compliance within the 15-day timeframe will result in rejection of the offer with no reconsideration. No exception to this requirement will be granted."

Dennison submitted an offer for workstation clusters with both 36-inch and 48-inch wide cabinets and shelves. It provided test data only on its 36-inch cabinets and shelves. By letter of May 23, the contracting officer informed Dennison of several deficiencies in its proposal including the failure to provide test results for its 48-inch wide cabinets and shelves. The letter also indicated that acceptable test results had to be provided within 15 days of the company's receipt of the letter or its offer would be rejected. Dennison received the letter May 30. On June 12, Dennison responded to the deficiency notice and included test results for its 48-inch cabinet door but not for its 48-inch wide shelves.

The contracting officer found that Dennison's offer was technically unacceptable because it did not provide the test results on the 48-inch shelves as required by the solicitation. The contracting officer also determined that the protester's cluster system could be reconfigured contrary to the solicitation's requirement that the cluster not be capable of being reconfigured.

Dennison contends that the solicitation was ambiguous. According to the protester, it did not interpret the term "worst case" used in the solicitation to mean largest and therefore only tested its 36-inch wide units. The protester also argues that its product has always met the test standards and that its only problem was in providing the test report within the 15-day deadline. Dennison states that it did not have a shelf in stock to test at the time and provided the test report as soon as it was able to do

so, 6 days after the deadline. Dennison maintains that since its product has always met the test standard, its offer should not be rejected simply because it took several extra days to provide proof in the form of a test report.

To the extent Dennison's protest concerns the wording of the solicitation, its protest is untimely. Our Bid Protest Regulations provide that a protest based upon improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals should be filed prior to that time. 4 C.F.R. § 21.2 (1989). Since the test provisions were in the solicitation Dennison should have complained that those provisions were either unclear or restrictive prior to the due date for the submission of its offer. To the extent that the protester was reasonably unaware that its 48-inch cabinet and shelves were considered to be "worst case" items under the solicitation's test provisions, any doubt should have been dispelled on May 30 when the protester received the GSA letter stating that test results were required for the 48-inch items. If it objected to the requirement, the protester should have protested to either GSA or our Office prior to the date for receipt of its response. Development Alternatives, Inc., B-235663, Sept. 29, 1989, 89-2 CPD ¶ _____. Since Dennison's June 22 protest to GSA was not timely filed we will not consider the subsequent protest filed with our Office. 4 C.F.R. § 21.2(a)(3). In any event, we do not find the test provision ambiguous. An ambiguity exists if solicitation provisions are subject to more than one reasonable interpretation. Collington Assocs., B-231788, Oct. 18, 1988, 88-2 CPD ¶ 363. We cannot think of any alternate interpretation, nor has the protester offered one, for the term "worst case" where it is followed by the explanatory parenthetical "i.e. the deepest and widest worksurface or shelf." We think this clearly informs all offerors that the deepest and widest worksurface and shelf that it is offering must be tested.

Further, although Dennison maintains that its product has always met the test standards, the solicitation required that proof, in the form of test data, be provided within the 15-day time frame. Both the solicitation and GSA's deficiency letter stated that failure to demonstrate compliance within the 15-day period would result in rejection of the offer. An agency is not required to allow offerors an open-ended time period within which to prove that its product meets the solicitation's requirements. We consequently find Dennison's offer was properly rejected as technically unacceptable because it did not timely furnish the test data as required by the solicitation. McLaughlin Enters., Inc., B-229521, Mar. 4, 1988, 88-1 CPD ¶ 232.

Since we have found the agency's rejection of Dennison's offer proper on this ground, we need not consider its contention that the contracting officer incorrectly determined that its cluster system was reconfigurable.

The protest is denied in part and dismissed in part.

for Seymour Egan
James F. Hinchman
General Counsel