

(12/29/90)



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sonicor Instrument Corporation
File: B-238131
Date: January 29, 1990

DIGEST

Protest challenging an alleged impropriety apparent from the face of a solicitation is untimely where filed after the closing date for receipt of proposals.

DECISION

Sonicor Instrument Corporation protests any award of a contract under request for proposals (RFP) No. DE-RP79-89BP97602, issued by the Bonneville Power Administration (BPA), Department of Energy, for an ultrasonic cleaner. BPA rejected Sonicor's offer based on a determination that it was technically unacceptable. Sonicor challenges an alleged impropriety in the RFP, alleging that the technical specifications of the required item unduly restricted competition.

We dismiss the protest.

The IFB was issued September 8, 1989, with a closing date for receipt of proposals of October 10. The RFP described the item being procured as follows:

"Cleaner, Ultrasonic, 12 gallon capacity; Complete unit with generator and tank. Westinghouse Tank #TK12HS and Generator #G1K or Equal."

With regard to the salient characteristics of the tank, the RFP provided in pertinent part as follows:

"Magnetostrictive type transducers shall be used that will withstand the shock of a large part accidentally dropped into the tank during the cleaning process."

On November 30, BPA notified Sonicor that its proposal was technically unacceptable because it offered an

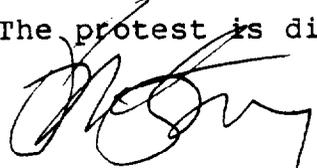
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electrostrictive type transducer rather than the magnetostrictive type transducer required by the RFP. BPA awarded the contract to EZE Products, Inc., the low-priced technically acceptable offeror, on December 1.

Sonicor filed its protest in our Office on December 22, without first filing a protest with the agency. Sonicor alleges that the requirement in the RFP for magnetostrictive type transducers is unduly restrictive of competition since it is used by fewer manufacturers of ultrasonic cleaning equipment, and it is more expensive than the electrostrictive type transducers it offered. Implicit in Sonicor's argument is that the electrostrictive type transducers it offered are equally suited to meet the government's needs.

Under our Bid Protest Regulations, protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to that date to be timely. 4 C.F.R. § 21.2(a)(1) (1989). Here, since the magnetostrictive requirement was apparent from the face of the solicitation, a protest challenging this requirement was required to be filed prior to the closing date for receipt of proposals. Since Sonicor filed its protest on December 22, over 2 months after the closing date for receipt of proposals, its protest is untimely.

The protest is dismissed.



Robert M. Strong
Associate General Counsel