



Comptroller General
of the United States

Washington, D.C. 20548

McArthur

Decision

Matter of: Power Distribution, Inc.

File : B-239330.2

Date: July 9, 1990

Robert G. Watt, Esq., Watt, Tieder, Killian & Hoffar, for the protester.

C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against rejection of proposal and exclusion from competitive range is dismissed as untimely where protester waited 3 months after receiving letter detailing specific bases for rejection of the proposal to file protest.

DECISION

Power Distribution, Inc. protests the rejection of its proposal as technically unacceptable and the exclusion of that proposal from the competitive range, under request for proposals No. DMA600-90-R-0032, issued as a total small business set-aside by the Defense Mapping Agency for power conditioning systems to be used in computer rooms.

We dismiss the protest as untimely.

On February 13, 1990, the agency issued the solicitation for a firm, fixed-price contract for 39 75-KVA power conditioning and distribution systems, plus related start-up services, training and data, with an option for an additional 26 systems to be provided as government-furnished equipment to contractors conducting site preparation at the aerospace center complex in St. Louis, Missouri.

The solicitation provided for evaluation of option prices and for award to that offeror which, as the result of price and technical evaluations, obtained the highest total weighted score, termed the "greatest value score." The solicitation set forth six technical evaluation factors and provided that for the purposes of award, the total value of the technical factors would be significantly more important than price.

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The agency received six proposals from five contractors on March 12 and completed its technical evaluation on March 15. As a result of this evaluation, the agency found that only two offerors, EPE Technologies, Inc. and United Power Corporation, were in the competitive range and that EPE had the higher greatest value score, based primarily on its substantially lower price.

On March 23, the agency notified the protester by letter that it had eliminated Power Distribution's proposal from the competitive range and had awarded a contract to EPE Technologies. That letter specifically advised the protester that its proposal was lacking in several technical areas, that it contained too many omissions to warrant further discussion and that the technical specifications had expressly forbidden the protester's offer to provide a belt-driven system.

On March 20, United Power Corporation submitted a protest of the original awardee's size status, which the contracting officer forwarded to the Small Business Administration (SBA). On April 5, the SBA issued a determination that EPE Technologies was other than small for the purposes of the procurement. On April 13, the agency advised United Power Corporation that despite the SBA decision, it would not terminate its contract with EPE Technologies.

United Power Corporation then filed a protest, which our Office sustained in our decision, United Power Corp., B-239330, May 22, 1990, 90-1 CPD ¶ 494, and in which we recommended that the agency terminate its contract with EPE Technologies and award a contract to United Power Corporation. Since, in the course of the protest, the agency advised our Office that it could not accept United Power Corporation's initial offer because it did not propose a firm option price past a certain date, we recommended that the agency reopen negotiations with United Power Corporation to give the firm the opportunity to cure this defect in its proposal.

On June 20, 1990, the agency provided the protester a copy of this decision and notified the protester by letter that it had decided to accept our recommendations, reopening discussions with United Power Corporation as the only offeror left in the competitive range, in order to cure the defect in its option offer. Power Distribution then filed this protest.

The protester objects to the exclusion of its proposal and the resultant definition of a competitive range of one offeror. The protester argues that the major defects in its

proposal were informational, denying that it proposed a belt-driven system and attributing the informational deficiencies in its proposal to the agency's failure to supply the protester with a complete solicitation package until 1 day prior to submission of initial offers. The protester states that in the current situation, where only one offeror remains in the competitive range, our Office will closely scrutinize the exclusion of other offerors from the competitive range, particularly where a proposal offers significant savings and where the defects in the proposal are minor and informational in nature.

Clearly, the primary basis for protest stated here relates to the evaluation of the protester's proposal and its rejection as technically unacceptable. Under our Bid Protest Regulations, protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier; a protest not filed within this period will be dismissed as untimely. 4 C.F.R. § 21.2(a)(2) (1990). If an offeror is provided a specific basis for proposal rejection, a protest of the rejection must be filed within 10 days thereafter. Atlantic Marine, B-239119.2, Apr. 25, 1990, 90-1 CPD ¶ 427. The protester's challenge to the rejection of its proposal is therefore untimely filed, coming 3 months after the agency gave specific notice of the reasons for rejecting the protester's proposal.

The protest is dismissed.



Ronald Berger
Associate General Counsel