

*Schatz*



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Custom Training Aids, Inc.

**File:** B-241446.2

**Date:** February 12, 1991

David H. Jones for the protester.  
James C. Hise, Esq., and Herbert F. Kelley, Jr., Esq.,  
Departments of the Army and the Air Force, National Guard  
Bureau, for the agencies.  
Sylvia Schatz, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

## DIGEST

1. Allegation that agency improperly rejected sample based on incorrect interpretation of weight requirement is untimely where agency's interpretation was clear from face of the solicitation and record shows that protester in fact was aware of agency's interpretation prior to initial closing date; under these circumstances, protest of rejection is essentially a challenge to the requirement itself that should have been raised in protest prior to initial closing date.
2. Where protester's proposal was rejected and the protester has not timely challenged the rejection, the protester would not be in line for award even if its protest against cancellation of solicitation were sustained; protester therefore is not interested party eligible to challenge cancellation.

## DECISION

Custom Training Aids, Inc. (CTA) protests the cancellation of request for proposals (RFP) No. DAHA10-90-R-0003, issued by the Departments of the Army and Air Force, National Guard Bureau, for integrated thermal signature targets. The protester principally maintains that the agency's determination to cancel the solicitation--on the basis that none of the offerors' target samples met the requirements of the RFP--was improper, because CTA's target sample did comply with the RFP's specifications.

We dismiss the protest.

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The solicitation requested offers for integrated thermal signature targets to depict threat targets during periods of reduced visibility and darkness for direct fire gunnery programs of tank, anti-tank, helicopter, and other weapon systems. The agency received four offers along with target samples on the September 6, 1990 closing date. After an initial weighing of all offerors' sample targets, CTA's offer was rejected as unacceptable because its target exceeded by 18 pounds the RFP's maximum dry weight requirement of 80 pounds for frontal targets. Subsequently, the agency tested the target samples of the three remaining offerors to determine if they met the specification requiring a certain percentage of the thermal image on the target to remain intact after being hit. The agency determined that none of the samples met this requirement and thus also rejected these offers.

CTA filed a protest in our Office on October 3, complaining about the agency's improper interpretation of the RFP's specifications, the rejection of its bid sample, and the failure to test its bid sample beyond the weight requirement. The agency subsequently decided that the specifications were unduly restrictive since none of the offerors' target samples complied with them. Consequently, it decided to cancel the solicitation and satisfy the requirement by reissuing the solicitation with less restrictive specifications, resoliciting for less realistic, wooden targets with thermal blankets (which it used prior to development of the integrated thermal targets) or, possibly, placing delivery orders against another agency's requirements contract. Based on this proposed cancellation, we dismissed CTA's October 3 protest as academic.

CTA subsequently filed the instant protest, alleging that its target sample does in fact comply with the weight limitation specification, as reasonably interpreted, and that the agency improperly rejected its sample based on an incorrect interpretation of this specification. Furthermore, CTA maintains that its offer would have been determined acceptable had its target sample been tested for the thermal image requirement, and that cancellation of the RFP therefore was improper and was intended to "subvert and circumvent" our bid protest process.

Initially, we find that CTA's protest challenging the rejection of its target as exceeding the weight requirement is untimely. The RFP stated as follows regarding the maximum weight:

"13. Frontal target shall weigh 80 lbs or less and Flank 160 lbs or less (dry weight) to be considered for award. Targets will be constructed so that the

potential of no more than a 25 percent weight gain to the target from water, ice, and snow when exposed to weather . . . ."

The RFP also listed three evaluation criteria and stated that the failure to comply with any one of them would result in rejection of the proposal. The third criterion stated that "[t]arget weight will be as detailed in paragraph 13 of Specifications. (Dry target weight)." CTA claims paragraph 13 allows a dry target weight of 100 pounds if there is no potential for target weight gain; since its sample target weighed only 98 pounds and is constructed so it will not gain weight from weather conditions, CTA argues, it was acceptable under this reading of the specification.

Even if CTA's interpretation of paragraph 13 is a possible one, the agency's interpretation also is plainly reflected in the RFP language. Paragraph 13 clearly indicated that the dry target weight could be no greater than 80 pounds, and the mandatory evaluation criterion referred to the dry target weight detailed in paragraph 13. Whether or not CTA believed rejection based on the dry target weight alone was proper, this language fairly indicated the agency's intent to reject targets not meeting the dry weight requirement. In fact, the record shows that CTA actually was well-aware of the agency's interpretation of the weight limit prior to the August 7, 1990 initial closing date; in a July 9 letter prompted by an RFP amendment increasing the weight limit for flank targets, CTA specifically questioned ". . . why the weight limit for all of the full-scale targets cannot be increased to 100 pounds. . . ." Indeed, this letter suggests that CTA, while disagreeing with the specification, actually read the specification as not providing a 100-pound limit.

Under our Bid Protest Regulations, protests of alleged solicitation improprieties must be filed no later than the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1990). Because CTA takes issue with the agency's application of the specifications in a manner clearly consistent with the RFP language, its protest on this ground is essentially a challenge to the specification itself; as such, it had to be filed prior to the August 7 initial closing date. Because it did not file by this date, its protest against the rejection of its target based on the weight limitation is untimely and will not be considered. See Teltara, Inc., B-240888.2, Jan. 15, 1991, 91-1 CPD ¶ \_\_\_\_.

Because CTA has not timely challenged the rejection of its proposal, we have no basis for objecting to the rejection. It follows, then, that CTA would not be in line for award even if its protest against the cancellation were sustained; the firm therefore lacks the direct economic interest necessary to qualify as an interested party eligible to protest the

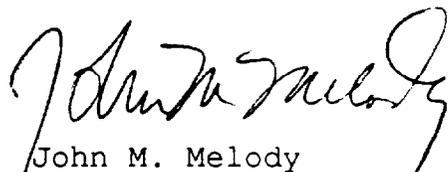
cancellation. 4 C.F.R. §§ 21.0(a) and 21.1(a); see J. Vinton Shafer & Sons, Inc., B-239313, Aug. 14, 1990, 90-2 CPD ¶ 124.

In any case, the cancellation was unobjectionable. Federal Acquisition Regulation (FAR) § 15.608(b)(4) provides that a procuring agency may reject all proposals (even if technically acceptable) received in response to a solicitation if cancellation is clearly in the government's interest. In a negotiated procurement such as this, a contracting officer has broad discretion in deciding whether to cancel a solicitation after the receipt of proposals, and need only have a reasonable basis to do so. See Lucas Place, Ltd., B-235423, Aug. 30, 1989, 89-2 CPD ¶ 193. We have specifically held that a reasonable basis to cancel exists when a new solicitation presents the potential for increased competition. Id.

Here, even had we found that CTA's target was acceptable, as it alleges, the agency determined that the specifications relating to the other testing requirements were too restrictive, as indicated by the failure of any of the tested targets to pass the testing. While the agency has not decided precisely how it will proceed to fill this requirement, it reportedly would make award under a new solicitation only after revising the requirements significantly from those stated in the RFP here, so that they can be satisfied by some offerors. Again, it is proper to cancel based on the possibility of future increased competition. See Independent Bus. Servs., Inc.--Recon., B-235569.4, Feb. 23, 1990, 90-1 CPD ¶ 207.

CTA's argument that the agency improperly canceled the solicitation to prevent our Office from deciding its bid protest is not evidenced in the record. In this regard, to show bad faith, a protester must submit virtually irrefutable evidence that the contracting agency directed its actions with the specific and malicious intent to injure the protester. Independent Bus. Servs., Inc., 69 Comp. Gen. 57 (1989), 89-2 CPD ¶ 413. The protester has made no such showing here.

The protest is dismissed.



John M. Melody  
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