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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The HiTech Engineering Company Inc.--
Reconsideration

File: B-241032.3

Date: March 22, 1991

Nicholas A. Sloan, Esq., for the protester, M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision dismissing protest of agency's failure to consider the values of the awardee's and protester's warranties in cost evaluation is affirmed on reconsideration; since solicitation did not provide for evaluation of warranty, protest that agency did not evaluate warranties is essentially a post-closing date challenge to the evaluation method in the solicitation and, as such, is untimely.

DECISION

The HiTech Engineering Company Inc. requests reconsideration of our October 22, 1990 dismissal of its protest against the Department of the Air Force's award of a contract to Hetra Computer and Communications Industries, Inc. under request for proposals (RFP) No. DAAB10-90-R-3074, for computers.

HiTech's protest challenged the agency's failure to consider the relative values of its and the awardee's offered warranties in the cost evaluation; HiTech argued that the greater value of its 1-year warranty, compared to the awardee's 3-month warranty, would more than offset the awardee's \$800 evaluated cost advantage over HiTech. We dismissed the protest as untimely on the basis that it concerned an alleged solicitation deficiency, but was not filed prior to the amended closing date for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990).

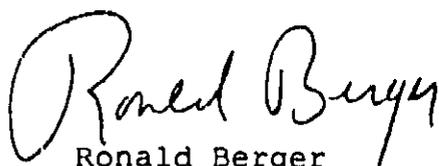
In its reconsideration request, HiTech states that it cannot see any connection between our dismissal notice and its protest argument, and therefore reiterates its argument that

the agency should have considered the value of the firms' warranties.

While the RFP provided for consideration of cost in the award decision, it did not provide that this aspect of the evaluation would be affected by the length of the warranties offered. As a practical matter, furthermore, the RFP did not require offerors to assign a dollar value to their warranties that could be used in comparing offers, and did not provide any method for offsetting the value of a warranty against the difference in evaluated costs, the approach advocated by HiTech (although HiTech does not explain how it believes the agency should have arrived at warranty values for purposes of comparing them in the evaluation).

Absent some such provision for including warranty value in the cost evaluation, there was no basis under the RFP for doing so, and this should have been clear to HiTech and other offerors. This being the case, if HiTech believed that warranties should be included in the cost evaluation, it was required to protest this alleged solicitation deficiency prior to the closing date for receipt of initial proposals, as we indicated in our dismissal notice. 4 C.F.R. § 31.2(a)(1). HiTech could not await the outcome of the competition and then, upon learning that it had not received the award, protest that the agency should have considered a factor that was not covered by the evaluation scheme. It therefore remains our conclusion that HiTech's protest is untimely.

The dismissal is affirmed.



Ronald Berger
Associate General Counsel