

Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Power Conversion Systems  
**File:** B-246654  
**Date:** February 26, 1992

Gerhard M. Schnuerer for the protester.  
Martin C. O'Brien, Esq., Department of the Air Force, for the agency.  
Mary G. Curcio, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest that awardee's offered product was not equal to the brand name product specified in the solicitation is dismissed as untimely where the protester did not diligently pursue information which forms the basis of the protest.
2. The fact that an offered equal item in a brand name or equal solicitation does not have a characteristic of the brand name product does not provide a basis to reject equal item where the characteristic was not listed as a salient characteristic of the brand name item.

## DECISION

Power Conversion Systems protests the award of a contract to EDP Environments, Inc., under invitation for bids (IFB) No. F04611-91-B-0023, issued by the Department of the Air Force for three electrical power isolation transformers.

We dismiss the protest.

The IFB was issued on August 5, 1991 for electrical transformers on a brand name or equal basis. The IFB specified On-Line/AAA Power model No. UR200H0900T3 as the brand name item. The solicitation contained the salient characteristics that a product other than the named item would have to meet to be considered equal to the specified product. The IFB also required bidders of equal items to submit descriptive literature so that the procuring agency could determine if the offered item was in fact equal to the specified brand name item.

Six bidders responded to the IFB by the September 4 bid opening date. The protester offered to provide the brand name item specified in the solicitation for \$75,209. EDP

offered to provide an equal item manufactured by On-Line/AAA Power--model No. PR200H0900T3--for \$70,672, the lowest bid received. After determining that the item offered by EDP was in fact equal to the specified brand name item, the Air Force awarded the contract to EDP on September 25. The Air Force informed the other bidders of the award decision by letter of September 25.

On November 6, Power protested to the Air Force that the transformer offered by EDP was not equal to the named brand transformer requested by the solicitation. Specifically, Power asserted that the noise rejection capability of the EDP offered model is 120 DB while the specified item has a noise rejection capability of 126 DB. Power therefore asserted that the Air Force improperly accepted the EDP bid. Before the contracting agency responded to Power's agency protest, Power submitted it to our Office.

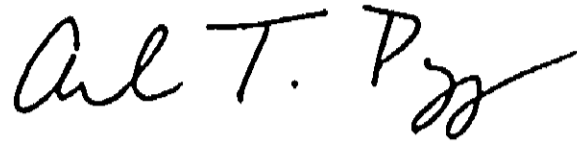
Our Bid Protest Regulations require that protests not involving apparent solicitation improprieties be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). Our Regulations also provide that a matter initially protested to the procuring agency will be considered only if the initial protest to the agency was filed with the agency or our Office within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely Power's protest would have to have been filed within 10 working days after it learned of the basis for protest.

Power asserts that it learned of the basis for protest on November 4, during a casual conversation with a representative of On-Line/AAA Power. However, it is the duty of the protester to diligently pursue the information necessary to determine its basis of protest, and if the protester fails to do so in a reasonable time, we will dismiss the protest. Douglas Glass Co., B-237752, Feb. 9, 1990, 90-1 CPD ¶ 175. Here, the Air Force sent a letter to Power informing the firm of the award to EDP on September 25. Assuming it took 1 week for Power to receive that letter, the protester knew of the award decision by October 2. There is no indication that Power attempted to obtain any information regarding EDP's bid until the protest was filed with the agency on November 6. Accordingly, we dismiss the protest because the protester did not diligently pursue the information on which it is based. See Security Def. Sys. Corp., B-237826, Feb. 26, 1990, 90-1 CPD ¶ 231.

In any case, in a brand name or equal procurement, an equal product need not meet unstated features of the brand name item, but only the item's salient characteristics listed in

the solicitation, J.E. Pope Co., Inc., B-238560, May 16, 1990, 90-1 CPD ¶ 478. Here, the noise rejection capability of the specified brand name item was not listed as a salient characteristic of that item. Accordingly, the failure of EDP's offered equal item to contain that characteristic does not provide a basis to reject EDP's bid.

The protest is dismissed.



Andrew T. Pogany  
Acting Assistant General Counsel