

Cunningham K(6P:76)



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Control Center, Inc.

**File:** B-247980

**Date:** June 9, 1992

Charles A. Wagner, III, Esq., Wagner, Mayers & Sanger, for the protester,  
L. James Tillman, Department of Energy, for the agency,  
James M. Cunningham, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against allegedly unnecessary technical requirement incorporated into solicitation by amendment is untimely where first filed after the quotation closing date set by the amendment.

### DECISION

Control Center, Inc. protests the rejection of its quotation and the award of a purchase order for a "Liquid sample cell closed circuit television system" to Rees Instruments, Inc., under a brand name or equal request for quotations (RFQ) dated May 20, 1991, issued by the Westinghouse Savannah River Company (Westinghouse). Westinghouse is a prime contractor which operates and manages the Department of Energy's (DOE) Savannah River Site.<sup>1</sup> Westinghouse rejected Control's quotation because the proposed equipment did not have a required "remote iris control." Control contends that the remote iris control requirement is arbitrary and unnecessary and that it quoted less expensive equipment which will meet the government's needs.

We dismiss the protest.

<sup>1</sup>Our Office will review the award of subcontracts by DOE prime contractors who manage and operate DOE facilities, which we consider to be acting "for" the government. Container Prod. Corp., E-232953, Feb. 6, 1989, 89-1 CPD ¶ 117. DOE concedes that Westinghouse is such a prime contractor in this case and that our Office has review authority over this protest.

Page 1 of the initial RFQ called for a "remote focus and iris control" as a salient feature of the required system; however, the "scope and specification" page of the RFQ did not list this feature. After quotations were received on June 5, 1991, from Control and Rees and were evaluated, Westinghouse amended the RFQ on August 9 to specify a "manual iris control" as a required "additional salient feature of the camera specified," and called for the submission to Westinghouse by August 19, of quotations in response to the amendment. On March 17, 1992, after Control's quotation was rejected as noncompliant and a purchase order was issued to Rees at a higher price, Control filed this protest with our Office. Control had not protested the amended requirement either prior to August 19, 1991, or at any time thereafter until May 7, 1992, when Control filed its comments on DOE's April 14 bid protest report to our Office.

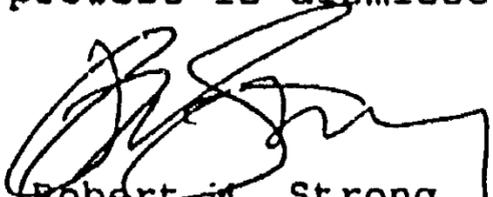
Control concedes that the wording of this amended requirement, coupled with the requirement on page one of the RFQ, as initially issued, for a remote focus and iris control, effectively required a "remote [outside the cell] iris control," which Control's system admittedly does not include. Thus, while Control had initially alleged that it had submitted the low responsive quote, in its comments, it changed its argument to one that its equipment should have been considered acceptable because the remote iris control requirement in the RFQ was unreasonable. Accordingly, Control Center's protest is that the amended solicitation contains an apparent specification impropriety.

Protests based upon alleged apparent improprieties which are incorporated by amendment into a solicitation must be protested not later than the next closing date for receipt of quotations following the incorporation. 4 C.F.R. § 21.2(a)(1) (1992). Because Control failed to protest the iris requirement before August 19, this ground of protest is untimely.

Control also argues that "American equipment [that is, Control's] fully meeting the non-arbitrary and legitimate specifications may be purchased at substantial savings over [Rees Instruments'] foreign equipment." This ground of protest is also not for consideration since Control's quotation was properly rejected as noncompliant, and a materially noncompliant quotation may not be accepted even

if it would result in savings to the government since acceptance would comprise the integrity of the competitive system. See International Pressure Serv., Inc., B-227952, Oct. 5, 1987, 87-2 CPD ¶ 339.

The protest is dismissed.



Robert M. Strong  
Associate General Counsel