



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Datametrics Corporation

File: B-251566

Date: February 9, 1993

Louis P. Benedict for the protester.
Charles B. Machion, Esq., Newman & Holtzinger, P.C., for
NAI, an interested party.
Timothy A. Beyland, Esq., Department of the Air Force, for
the agency.
Stephen J. Gary, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that awardee's product could not comply with solicitation's technical specifications, since protester believes awardee has no acceptable product, is untimely where notice of awardee's technical acceptability was published in the Commerce Business Daily 6 months earlier, and protester did not raise the objection within 10 days thereafter.

DECISION

Datametrics Corporation (DMC) protests the award of a contract to North Atlantic Industries (NAI) under request for proposals (RFP) No. F04606-91-R-25792, issued by the Department of the Air Force for high-speed, lightweight printers. DMC asserts that NAI's product did not satisfy the RFP requirement for an off-the-shelf printer.

We dismiss the protest.

The solicitation, issued on May 28, 1991, was a two-step, sealed bid procurement, for modified off-the-shelf printers to support the Air Force's ground digital communications terminal system. Offerors were to submit technical proposals in accordance with the RFP's specifications, which would be evaluated by the agency to determine their technical acceptability. Those offerors found to be technically acceptable then would be asked to submit price proposals. Award was to be based on the technically acceptable proposal that was lowest in price.

Three proposals were received in response to the RFP; by letters dated May 26, 1992, all three were notified that

their proposals had been found technically acceptable. In addition, on June 1 the Air Force published a notice in the Commerce Business Daily (CBD) which listed the names of the three contractors--including DMC and NAI--which had been found acceptable under step one of the acquisition. The step two solicitation was issued on July 27; based on the prices submitted, award was made to NAI on November 23 as the lowest priced, technically acceptable offeror. After learning of the award, DMC then filed this protest with our Office on December 9.

DMC argues that the RFP required off-the-shelf printers that could meet the specifications with only minor modifications; since NAI, according to the protester, offered a printer that would require major modifications, its proposal was technically unacceptable and should not have formed the basis for award. As the basis for its protest, DMC states that:

"[H]aving been in the printer business for over 30 years, [DMC] understands the products which have been or are being offered by its competitors. To the best of DMC's knowledge, NAI does not have on its shelf any printer which can be considered to be a 'modified off-the-shelf' unit."

We dismiss the protest as untimely. Under our Bid Protest Regulations, a protest such as this must be raised within 10 days of the time the basis for protest was known or should have been known. 4 C.F.R. § 21.2(a)(2) (1992). The specification for a modified off-the-shelf item was contained in the step one solicitation, which provided for the submission and evaluation of technical proposals. The June 1 CBD notice clearly stated that NAI's proposal had been found technically acceptable and that the firm would proceed to the second (price) step of the procurement. (DMC does not deny that it was aware of the CBD notice.) DMC therefore knew or should have known that NAI's product had been found technically acceptable. Federal Servs. Group, B-224605, Dec. 23, 1986, 86-2 CPD ¶ 710 (publication in CBD constitutes constructive notice). Based on its asserted knowledge that NAI had no printer that met the off-the-shelf requirement, DMC was required to protest the alleged noncompliance within 10 days of publication of the notice--that is, in June. Its protest to our Office in December, 6 months later, is therefore untimely.

Although DMC claims it did not know that NAI had offered a noncompliant item until early December, the protester does not explain how the same information on which it based its December protest--DMC's asserted general knowledge of NAI's product line--would not have provided a basis for the same protest 6 months earlier. We therefore will not consider

the merits of the protest. See Ingersoll-Rand Co., B-189071, Oct. 3, 1977, 77-2 CPD ¶ 254 (in a two-step procurement, allegation of noncompliance with technical specifications had to be raised within 10 days of publication of CBD notice that the ultimate awardee had been found technically acceptable; the same information that later provided the basis for protest was also available at the time of such publication).

The protest is dismissed.



John M. Meloy
Assistant General Counsel