



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Innerspace Technology, Inc.

**File:** B-257652

**Date:** August 19, 1994

### DECISION

Innerspace Technology, Inc. protests the award of a contract to Specialty Devices, Inc. by the Department of the Interior under request for proposals (RFP) No. 9009, for bathymetric survey equipment. Innerspace contends that the awardee's proposed product does not comply with the solicitation specifications and generally challenges the propriety of certain solicitation requirements.

We dismiss Innerspace's protest of the award on the basis that the protester is not an interested party. We dismiss the protest of the RFP's stated requirements as untimely because it challenges alleged improprieties in the solicitation that should have been protested before the initial closing date for the receipt of proposals or, where the solicitation requirement was incorporated after initial submission of offers, should have been protested before the next closing date after the change was made to the solicitation.

The RFP was issued on May 23, 1994, and initial proposals were due by May 27. The RFP was amended on May 27 and June 2. Three offerors submitted proposals by the June 3 closing time for receipt of best and final offers (BAFOs). By letter of June 10, Innerspace was notified of the agency's rejection of its BAFO as technically unacceptable for failing to meet the RFP's specifications for the mobile unit to weigh less than 50 pounds without the carrying case.

On June 17, Innerspace filed an agency-level protest of the award; the firm filed a separate protest of the award with our Office on June 20. In its protests, Innerspace contends that Specialty's offered product does not comply with certain solicitation specifications, however, Innerspace does not challenge the agency's determination that the protester's BAFO was technically unacceptable. (Innerspace first questioned the determination that its product was technically unacceptable in its July 14 response to the

agency's July 13 request for dismissal of its June 20 protest,) Innerspace also has not protested the technical acceptability or price of the remaining offeror that would be in line for award if Innerspace's protest of the award were sustained.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1994). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Since there has been no timely challenge to the rejection of the protester's proposal or the proposal of the intervening offeror who would precede the protester in eligibility for award under this solicitation, the protester lacks the direct economic interest required to maintain a protest.<sup>1</sup> Accordingly, the protest of the awardee's proposed product's compliance with the solicitation's specifications is dismissed.

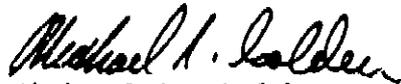
Innerspace also challenges certain RFP specifications, including requirements which the protester states cannot be met by any offeror, and the 50-pound weight limit imposed by amendment No. 2 to the RFP. We dismiss the protest as untimely because it challenges alleged improprieties in the solicitation that should have been protested before the initial closing date for the receipt of proposals or, where the solicitation requirement was incorporated after initial submission of offers, should have been protested before the next closing date after the change was made to the solicitation.

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<sup>1</sup>To the extent Innerspace's July 14 response to the agency's dismissal request contests the rejection of its BAFO, or the propriety of the agency's discussions regarding its product exceeding the amended RFP's 50-pound weight limit, the challenges were not timely filed within 10 working days after the protester knew of the bases for its protest. 4 C.F.R. § 21.2(a)(2).

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1). This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id. Since Innerspace's protest of the terms of the RFP was not timely filed, we dismiss the protest without further consideration.



Michael R. Golden  
Assistant General Counsel