



Comptroller General  
of the United States

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Washington, D.C. 20548

# Decision

Matter of: Intellitec  
File: B-253921.4  
Date: July 10, 1995

## DECISION

Intellitec (formerly Brunswick Corporation) protests the award of a contract to ILC Dover Corporation, under request for proposals (RFP) No. DAAA09-92-R-0418, issued by the Department of the Army for M28 collective protection equipment and associated spare and repair parts.

We dismiss the protest.

The Army issued the solicitation on April 20, 1993, for M20 and M28 equipment and parts. Two offerors, Production Products and ILC Dover, submitted proposals by the closing date. On May 16, 1994, the agency made an award to Production Products.<sup>1</sup> ILC subsequently protested the award to our Office. The Army notified our Office that corrective action would be taken and on July 27, our Office dismissed ILC Dover's protest as academic.

The agency subsequently opened discussions with the two offerors, and received revised offers. On April 21, 1995, Production Products' contract was modified to delete the provision for the M28 equipment and to reflect Production Product's latest offer for the M20 equipment. On April 25, a contract for the M28 equipment was awarded to ILC Dover.

A Commerce Business Daily (CBD) notice on May 18, publicized the award to ILC Dover. On May 26, as the result of a Freedom of Information Act (FOIA) request, Intellitec received various documents relating to this solicitation including, an abstract of the proposals received for the solicitation and a copy of the contract with ILC Dover. Intellitec then filed this protest on June 15, asserting

<sup>1</sup>Brunswick Corporation was to have performed a significant portion of the contract as a subcontractor to Production Products.

CVE

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that the agency's decision not to follow competitive procedures in awarding the contract lacked a reasonable basis and precluded Intellitec from competing directly for this requirement.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). Intellitec knew, or should have known, from the May 18 CBD notice and the documents that it received as a result of its FOIA request, that the Army had awarded the M28 portion of the solicitation to ILC Dover. Intellitec's protest, filed more than 10 working days thereafter, is thus untimely.

Intellitec's other contention is that the agency improperly awarded ILC Dover a contract to provide the M28 equipment at a price higher than its best and final offer (BAFO) price.

Under the Competition in Contracting Act of 1984 (CICA), this Office only decides protests filed by an interested party, which the statute defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract." 4 C.F.R. § 21.0. A prospective supplier or subcontractor does not have the requisite interest to be considered a prospective or actual bidder. Ultrox Int'l, B-233013, Nov. 29, 1988, 88-2 CPD ¶ 535.

Since Intellitec was not an actual offeror under the RFP, under CICA and our implementing Bid Protest Regulations, it is not an interested party to protest the propriety of the Army's award of a contract to ILC Dover at a price higher than its BAFO price.

The protest is dismissed.



Paul Lieberman  
Assistant General Counsel