

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

PL-11

10,916

FILE: B-194794

DATE: July 30, 1979

MATTER OF: Dayton Aircraft Products

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DIGEST:

1. Protest filed after closing date for receipt of proposals alleging improprieties in solicitation is untimely. Even if protest was made prior to closing date, agency's consideration of proposals despite concerns expressed by protester was initial adverse agency action and protest filed with GAO nearly two months after that date is untimely.
2. Protest of agency's determination that alternate proposal was not acceptable is denied where protester fails to show agency determination is without a reasonable basis.

Dayton Aircraft Products (Dayton) protests the award of a contract under Request for Proposals (RFP) F04606-79-R-0311 to Gayston Corporation (Gayston). The RFP was issued on February 7, 1979, by the Department of the Air Force with a closing date of March 9, 1979. Dayton maintains that award was not made to the lowest qualified offeror.]

The RFP, a procurement restricted to qualified sources, called for the delivery of 1,716 static dischargers, NSN 5920-00-462-1121, and identified the discharger as part number 611-1008-HE. Paragraph D-3 of the RFP listed Dayton and Gayston as qualified sources of the part number. The Air Force received three proposals in response to the RFP. Gayston submitted an offer of \$8.69 per unit. Dayton-Granger Aviation, Inc. (Dayton-Granger) submitted a proposal for a qualified item (Dayton-Granger part number 16315) at \$9.90 per unit. Dayton, an affiliate of Dayton-Granger, submitted an alternate proposal, offering an item not previously qualified (Dayton part number 16410) at \$7.88 per unit. The Air Force evaluated Dayton's alternate proposal, found the offered item to be an unacceptable replacement for the required item, and made contract award to Gayston on April 17, 1979.

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Dayton maintains that Gayston is not a qualified source for the discharger since part number 611-1008-HE has only been manufactured by Granger Associates, a firm whose product line was acquired by Dayton-Granger in 1976, and by Dayton-Granger. The Air Force questions whether this issue was timely filed because it was apparent from the solicitation that Gayston was considered a qualified source and the protest was filed after the time for submission of initial proposals, the deadline for protesting such matters. See 4 C.F.R. 20.2(b)(1) (1979). However, Dayton asserts that it protested by telephone on February 20, 1979, that the item description which limited offers exclusively to the Dayton product (Dayton-Granger part number 16315) was inconsistent with Paragraph D-3 of the RFP that identified both Dayton and Gayston as qualified sources. The Air Force agrees that a phone conversation occurred between a Dayton or Dayton-Granger representative and the contracting officer concerning the item description, but it did not construe it as a protest.

Even if Dayton protested by phone, its subsequent protest to the General Accounting Office is untimely. Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. § 20.2(a), provides, in pertinent part that:

" * * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered * * *." (Emphasis added.)


"Adverse agency action" is defined to include any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with an agency. 4 C.F.R. § 20.0(b). In this case, assuming the phone conversation constituted a protest initially "filed" with the Air Force, Plattsburgh Laundry and Dry Cleaning Corp., et al., 54 Comp. Gen. 29 (1974), 74-2 CPD 27, the initial adverse agency action was the receipt of proposals on March 9, 1979,

despite the concerns earlier expressed by Dayton. General Leasing Corporation - Reconsideration, B-193527, March 9, 1979, 79-1 CPD 170. Since Dayton's protest to our Office was not filed until May 3, 1979, nearly two months later, the protest is untimely. Accordingly, this basis of Dayton's protest is dismissed.

Dayton's protest also suggests that the Air Force improperly rejected its low alternative offer under the RFP. The record discloses that Dayton-Granger contacted Air Force procurement officials on February 20, 1979 about this matter and was advised that Dayton could submit a separate proposal on this item which would be evaluated in order to determine if the offered parts were acceptable. After the proposals were received, the contracting officer requested a technical evaluation of this proposal from Air Force engineers. The technical evaluation found that Dayton part number 16410 was not an acceptable replacement for the acceptable Dayton-Granger part number 16315 since the former part is tested by statistical sampling rather than by 100 percent inspection and the part "is primarily used in a subsonic environment" rather than "a suitable item for supersonic aircraft."

A procuring activity has wide discretion in determining whether a proposal meets its actual minimum needs. Baytron Systems Corporation, B-192329, July 24, 1978, 78-2 CPD 67. In our opinion, the solicitation clearly contemplated that all offerors submit products that were previously qualified. Product prequalification in a solicitation goes to the essence of a procurement. 43 Comp. Gen. 707 (1964). The record shows that Dayton's alternate item had not been qualified and that time did not permit qualification testing prior to award. Accordingly, its alternate offer was properly rejected as unacceptable. See 50 Comp. Gen. 691 (1971).

The protest is denied.


Deputy Comptroller General
of the United States