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DECISION



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

FILE: B-213756

DATE: June 5, 1984

MATTER OF: Hydraulic Design and Manufacturing

DIGEST:

Protest that a solicitation provision requiring offerors to furnish items from an approved source is improper will not be considered since the alleged defect was apparent from the face of the solicitation but the protest was not filed until after the closing date for receipt of proposals and therefore is untimely.

Hydraulic Design and Manufacturing protests the requirement in request for proposals (RFP) Nos. DAAA09-83-R-4762 and DAAA09-83-R-4710, for check valves (RFP 4762) and valve assembly rammers (RFP 4710), that offerors certify the items to be supplied would be obtained from an approved source. We dismiss the protest.

Both solicitations were issued by the U.S. Army Armament Munitions and Chemical Command. Each solicitation included source control drawings for the items to be supplied and each contained a certification clause which provided:

"CERTIFICATION OF SOURCE CONTROL ITEM OR COMPONENTS

This solicitation contains a requirement for bidders/offerors to supply an item or component(s) that is (are) identified as source controlled. The bidder/offeror represents and certifies as part of his bid/offer that: (check box)

- () the item/component(s) being offered will be obtained from only the approved source(s) identified on the source control drawing(s).

CAUTION: If this is a formally advertised procurement, failure to complete this certification will render the bid nonresponsive."

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Each solicitation also contained a warning on its second page directing offerors' attention to the certification requirement and warning them that failure to complete the certification may result in proposal rejection.

Hydraulic's initial offers were low under both solicitations. It failed, however, to complete the required certifications in its initial proposals. In its requests for best and final offers under both solicitations the agency requested that Hydraulic comply with the certification requirement. Hydraulic did not respond to the requests but instead protested to this Office.

Hydraulic complains that the certification requirement effectively precludes it from competing because it is not listed as an approved source.

Under our Bid Protest Procedures, 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 that date. 4 C.F.R. § 21.2(b)(1) (1984). Hydraulic maintains that its basis for protest was not apparent from the face of the solicitations because it read the cautionary language of the certification clauses to mean that they applied only to advertised procurements. We do not agree. We think it is clear that the certification clauses used are standard clauses designed for use in both advertised and negotiated procurements, as evidenced by their reference to both bidders and offerors. The cautionary language cited by the protester was intended to alert bidders on advertised procurements of the effect of a failure to make the required certification. It cannot reasonably be read as indicating that the certification requirement is applicable only to advertised procurements. We therefore view the protest as untimely.

We point out that we have approved the procurement of items on a source controlled basis under the appropriate circumstances. See VSI Corporation, Aerospace Group, B-204959, July 30, 1982, 82-2 CPD ¶ 94. The protester's objection to the restriction here appears to be that the testing procedure for items to be procured is relatively simple and the agency did not test a sample item provided

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by the protester. The protester's item was not, however, submitted for testing until after the agency requested best and final offers. The fact that the agency did not test and approve the protester's item during the course of these procurements does not indicate that the agency acted improperly. The problem seems to have been caused primarily by the protester's failure to read the solicitation carefully.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel