

CHEARN PL-II

DECISION



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

FILE: B-220017.2 **DATE:** February 14, 1986
MATTER OF: C-R Control Systems, Inc.

DIGEST:

1. Where an invitation requires that offered products be on a qualified products list, a bid of an item on the list is responsive notwithstanding competitor's complaint that the product does not comply with the specification and, thus, should not be on the list, since bid did not take exception to the specification.
2. Whether a product should have been removed from a qualified products list before bid opening is a matter for the determination of the qualifying agency, and the General Accounting Office will not question the agency's judgment unless it is shown not to have a reasonable basis.
3. Protest after bid opening that product should be removed from a qualified products list is not a basis for questioning responsiveness of the bid.
4. Additional ground of protest concerning agency's minimum needs is untimely where it is initially raised in comments to the agency report more than 10 working days after the protester knew or should have known of the basis for the protest.

C-R Control Systems, Inc. protests the award to Automated Power Systems, Inc. of a contract for 1,980 12-volt solid-state flashers used in aids-to-navigation lamps under invitation for bids (IFB) No. DTCG36-85-B-00069, issued by the United States Coast Guard. The procurement was limited to qualified products list (QPL) sources. C-R Control and Automated Power were the only manufacturers with flashers on the QPL at the time of bid opening. C-R Control contends that the Automated Power flashers do not comply

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with the specifications required for a qualified product, so that both the placement of Automated Power's unit on the QPL and the award were improper. Alternately, C-R Control argues that the specifications are ambiguous.

We deny the protest in part and dismiss it in part.

Background

A solid-state flasher is an electrical device that periodically interrupts the power to an electric light beacon, thus causing the beacon to flash. Those purchased here are to be used to flash lamps in beacon assemblies on buoys or fixed structures in or around navigable waters. A beacon assembly consists of a lantern with lens, a 12-volt lampchanger containing one lamp in burning position and at least one spare lamp able to move into burning position when so controlled, and a flasher.

The IFB, issued on July 29, 1985, required the offered products to be manufactured in accordance with Coast Guard Purchase Description No. 181D, dated December 1983 and changes 1 and 2, and to have been previously tested and approved for inclusion on the QPL established in conformance with that specification. The QPL, dated August 8, 1985, included both Automated Power and C-R Control flashers. Award was made to Automated Power on September 30, 1985, and this protest followed.

The specifications required the flasher to contain circuitry capable of sensing a filament failure in the lamp and then activating the lampchanger to place a new lamp in the burning position. At the time of bid opening for the flasher procurement, the only qualified lampchanger was manufactured by C-R Control.

Automated Power previously sold flashers to the Coast Guard pursuant to a contract awarded in July 1983. As a result of the failure of two of its flashers, Automated Power prepared a failure analysis report for the Coast Guard, dated February 4, 1985. Automated Power concluded that high voltage spikes generated by the lampchanger when rotating a new lamp into position damage a transistor in the flasher, and cause the flasher to fail after an average of 50 lamp changes. In March, the Coast Guard Commandant issued a telex message to the field describing the problem and prescribing a modification to the lampchanger. To eliminate the damaging voltage spike, the message prescribed the installation of a surge suppression diode between two

terminals of the lampchanger at the next scheduled visit to the beacon assembly or prior to installation in the field. The message added that the specification for the flasher would be modified to incorporate protection of the flasher circuitry from high voltage spikes generated by the lampchanger.

To obtain flashers that would be required in the interim, the Coast Guard initiated this procurement before modifying its specification for flashers and establishing a new QPL. Consequently, purchase of Automated Power's flashers require the Coast Guard to attach protecting diodes to the lampchangers that do not already have them. A new specification was issued in August 1985, specifically requiring that flashers be designed so that they will not be damaged by voltage spikes from the lampchangers.

C-R Control Protest

C-R Control contends that the Automated Power flasher does not comply with several requirements of the specifications. C-R Control maintains that the Automated Power flasher does not have a required surge suppression capability so that the flasher fails to operate properly after several lampchanger cycles. According to the protester, this is contrary to the purchase description requirement that flashers be designed to "emphasize long, trouble-free life" and "the maximum in reliability." Additionally, the protester states that, with the diode modification to the lampchanger, the flasher-lampchanger system does not have the required protection against reverse-polarity and short circuits. Further, the protester contends that the Automated Power flasher terminal slots necessary for electrical connections are not of a uniform width throughout their length as required by the specification, and that the transistor damaged by voltage spikes is rated much lower than required by good engineering design.

According to C-R Control, the Coast Guard should either have rejected Automated Power's bid as nonresponsive to the IFB, or waived for all bidders the requirements of the specification that are not met by Automated Power. C-R Control states that it could have provided a lower bid for flashers if it omitted surge suppression, self-protection features and terminal slots of a uniform width. In response to the agency report, which argues that the specification does not require surge suppression as claimed by C-R Control, the protester contends that the specification is at

least ambiguous regarding this feature and should be amended. In addition, C-R Control asserts that, if the Coast Guard's reading of the specification is correct, then the specified flashers do not meet the minimum needs of the government because they require the agency to install protecting diodes. Finally, the protester argues that the cost of installing the protecting diodes should be added to Automated Power's bid so that bidders are treated equally.

Coast Guard Response

The Coast Guard believes that C-R Control errs in an overly restrictive interpretation of the specifications. The agency maintains that the specifications do not require that flashers have surge suppression, or specify a number of lamp changes that must be accomplished before flasher failure. The prescribed test for compliance with the specification only requires one lamp change. According to the agency, any shortcomings in performance of the awardee's flasher are attributable to the inductance of the motor on the lampchangers, which is larger than that required by the lampchanger specification and, after a significant number of lamp changes, may damage the flasher.

The Coast Guard explains that its decision to install a diode on the lampchanger to protect the flasher from damaging voltage spikes does not establish that the flasher was improperly designed. The agency also states that Automated Power's flasher has reverse-polarity and short circuit protection. The agency does not disagree that installation of the diode on the lampchanger prevents the flasher's reverse-polarity and short circuit protection from also protecting other parts of the system. However, this was not a requirement of the flasher specification, and the agency believes that any risk in this area is minimal.

The Coast Guard also questions C-R Control's interpretation of the specifications for flasher terminal slots. According to the agency, the specification does not describe the shape of the slots, only their order and general location. They need only be a certain size at one end, not at both ends as alleged by C-R Control. The Coast Guard states that the uniform width of C-R Control's terminal slots are "nice to have," but not necessary.

Finally, the agency maintains that the addition of a diode, costing approximately \$2.00, is far less than the \$13.00 and \$19.00 differences (depending on the type of

flasher rhythm) between the Automated Power's and C-R Control's bid prices.

Analysis

We first point out that Automated Power's bid was clearly responsive to the IFB. The solicitation required that offered items be on the QPL, and Automated Power's flasher was on the QPL at the time bids were opened. The firm's bid then offered, without exception, to furnish products in compliance with the applicable specification. See McIntyre Engineering Co., Inc., B-190136, Mar. 7, 1978, 78-1 CPD ¶ 177.

Where questions are raised before bid opening regarding whether a product is properly included on a QPL, the activity that prepared the QPL has the responsibility for determining if the product conforms with the specification and whether or should be retained on the list. Federal Acquisition Regulation, 48 C.F.R. § 9.203 (1984). We will not question the agency's judgment in this respect in the absence of a showing that the judgment did not have a reasonable basis. D Square Engineering Co., B-213581 et al., May 9, 1984, 84-1 CPD ¶ 515; McIntyre Engineering Co., Inc., B-190136, Aug. 29, 1978, 78-2 CPD ¶ 148. Here, before issuing the solicitation, the Coast Guard considered the failures of the Automated Power flasher, and determined that it complied with the specification and should be placed on the QPL until the specification is amended and a new list established. C-R Control has not shown that this determination was unreasonable.

The flasher specification does not expressly require incorporation of a surge suppression capability or other method for protecting the flasher from damage from voltage spikes induced by the lampchanger. Moreover, C-R Control has not established that when the specification was drafted the likelihood of such voltage spikes eventually disabling the flasher was so clear that a requirement for protection from such spikes should be inferred from general specification requirements for a "long, trouble-free life." Thus, we do not believe the specifications require surge suppression or are ambiguous in this respect. The Coast Guard also considered the fact that the installation of a diode on the lampchanger prevents the reverse-polarity or short circuit protection of Automated Power's flasher from extending to the other elements of the beacon assembly. We agree with the agency that this is not a deficiency in the flasher,

since the flasher itself contains the self-protective features required by the specification. Consequently, we deny this portion of the protest.

In its response to the agency report, the protester asserted that there is a problem with the type of transistor selected for use in the Automated Power flasher. C-R Control submitted the transistor manufacturer's literature to establish that the transistor is not designed to operate with the electrical load condition permitted in the lamp-changer to which it is connected. In effect, the protester argues that a requirement for good engineering practice inherent in the specification requires use of a higher-rated transistor. This claim and the claim that the terminal slots of the flasher are not uniform in width first arose in this protest, after bid opening. Thus, they do not provide grounds to question the Coast Guard's earlier determination to place the Automated Power flasher on the QPL notwithstanding previous failures, or to question the responsiveness of Automated Power's bid in this procurement. See McIntyre Engineering Co., Inc., B-190136, supra, 78-1 CPD ¶ 177.

C-R Control argues that the flasher specification cannot reflect the agency's minimum needs unless it requires a surge suppression capability. We consider this argument to be untimely. Protest contentions not raised in a protester's initial submission must independently satisfy the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. part 21 (1985). Where the protester supplements its original timely protest with a new ground of protest more than 10 working days after the basis for the new argument should have been known, the new ground is untimely. See Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230.

The protester's minimum needs contention is based upon the same failures of the Automated Power flashers that gave rise to the remainder of its protest. The issue was not raised until December 2, almost two months after the initial protest was filed. While we dismiss this additional basis for protest, we note that agencies are required to develop specifications to permit full and free competition, 41 U.S.C.A. § 253(a) (West Supp. 1985). Consequently, we find no merit in arguments that specifications should be more restrictive in order to meet a protester's definition of an agency's minimum needs. See DSP Technology, Inc., B-220593, Jan. 28, 1986, 86-1 CPD ____; Joseph Pollak Corp., B-209899, Dec. 23, 1982, 82-2 CPD ¶ 573.

Finally, the protester argues that in the bid comparison the Coast Guard should have increased Automated Power's bid to include the agency's costs of installing protective diodes on lampchangers. The protester is in essence asking that the Coast Guard pay the protester for a capability of its flasher that was not required by the specification. Automated Power's bid was responsive; there is no basis for penalizing the firm for not offering an additional feature.

We deny the protest in part and dismiss it in part.

for Seymour Efron
Harry R. Van Cleve
General Counsel