



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tritan Corporation

File: B-223291

Date: August 27, 1986

DIGEST

1. Announcement of a procurement in the Commerce Business Daily generally constitutes constructive notice of a solicitation and its contents. When the announcement is properly classified and describes the item being procured by national stock number, type, dimensions, and two different manufacturers' names and part numbers, a prospective offeror that is in the business of manufacturing the item in question is on notice of the requirement and should obtain a copy of the solicitation referenced for further details.
2. Protest alleging that a request for proposals for equipment identified by the part numbers of two manufacturers unduly restricts competition, filed after the due date for initial proposals, is untimely and does not fall within the significant issue exception to the Bid Protest Regulations.
3. Where adequate technical data is not available, but the agency indicates in the solicitation that it will consider alternate offers and in fact receives such offers, a requirement identified by the part numbers of two manufacturers does not unduly restrict competition.

DECISION

Tritan Corporation protests the allegedly restrictive nature of request for proposals (RFP) No. DLA700-86-R-3213, issued by the Defense Logistics Agency's (DLA) Defense Construction Supply Center. The solicitation, for a quantity of 590 high pressure water hoses used for cleaning purposes, identified the items by the name and part number of two manufacturers.^{1/} Tritan's primary argument is that the procurement was improperly restricted to these manufacturers, despite the fact that off-the-shelf hoses, with slight modifications, allegedly can meet it. We dismiss the protest as untimely.

^{1/} The named manufacturers were Weatherford Oil Field Cranes Water Blaster Systems, Part No. 31427, and Jetstream of Houston, Part No. 50745.

The procuring agency transmitted an announcement of the requirement to the Commerce Business Daily (CBD) on April 11. The announcement, which appeared on April 17, stated that offers from all responsible sources would be considered. However, it referenced Note 73, which stated that specifications, plans, and drawings were not available and could not be furnished by the government.

The RFP, issued on May 2 with a closing date of June 2, included a "Products Offered" clause that outlined (1) conditions under which offers for alternate products would be considered and (2) data necessary to enable the government to evaluate the such products. The RFP also indicated that the government did not have detailed specifications or drawings for the hoses.

The agency argues that the protest is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), because it concerns an alleged impropriety in an RFP, and therefore should have been filed before the due date for receipt of initial proposals. We did not receive Tritan's protest until June 4, 2 days after the June 2 closing. Tritan, however, contends that it was unaware of the alleged impropriety earlier because it could not readily identify the hoses from the CBD announcement. Alternatively, the protester contends that we should consider the matter under the significant issue exception of our Bid Protest Regulations, 4 C.F.R. § 21.2(c). Tritan seeks a resolicitation in which it can compete.

We find the protest untimely. Announcement of a procurement in the CBD generally constitutes constructive notice of a solicitation and its contents. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 CPD ¶ 55. Tritan does not argue that the announcement was misclassified or otherwise misleading, but only states that it could not determine from the manufacturers' names and part numbers what type of hoses was being procured. Compare Microcom Corp., B-218296, July 3, 1985, 85-2 CPD ¶ 23 (misleading caption); Morris Guaralnick Assocs., B-214751.2, Dec. 3, 1984, 84-2 CPD ¶ 597 (misclassified notice).

Our review of the CBD establishes that the requirement in question was properly synopsisized under heading No. 47, "Pipe, Tubing, Hose, and Fittings," and specified a hose assembly, national stock number 4720-01-038-7429, nonmetallic, 1/2 inch in diameter and 50 feet long. In other procurements under the same category, hoses are similarly identified, with the additional information of either a manufacturer's name and part number or a particular military specification. The CBD announcements do not, however, provide details as to the part numbers or military specifications. In short, it is up to prospective offerors to obtain copies of any solicitation referenced for more complete information.

In its protest, Tritan describes itself as a purchaser of unfinished hoses from the same source as the manufacturers named in the CBD

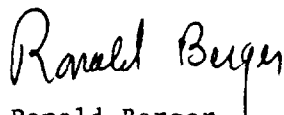
announcement. Thus, the protester is also in the business of manufacturing high pressure water hoses. In our opinion, Tritan should have been aware from the CBD announcement that DLA intended to purchase such hoses, and should have obtained a copy of the RFP for further details. Since the manufacturers' names and part numbers appeared both in the CBD notice and in the RFP, any allegation of restrictiveness concerned a defect apparent on the face of the solicitation, and we agree with the agency that Tritan's protest, filed after the due date for initial proposals, is untimely. 4 C.F.R. § 21.2(a)(1).

As for the protester's alternate argument, we reserve the significant issue exception for questions of widespread interest to the procurement community and for cases of first impression. International Diamond Products Corp.--Reconsideration, B-221245.2, Jan. 17, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 61. Whether a single offeror can compete for a single procurement is not an issue of widespread interest, and we have previously considered whether identifying a requirement by the manufacturer's name and/or part number when sufficient technical data is not available unduly restricts competition. See, e.g., Pacific Sky Supply, Inc., 64 Comp. Gen. 194 (1985), 85-1 CPD ¶ 53; Microcom Corp., supra.

In any event, we note, there is no indication in the record that specifications or the technical data were available to permit a solicitation other than on the basis of the part numbers referenced in the solicitation; the protester has submitted no evidence other than its bare assertion that the items being procured are off-the-shelf. The agency, moreover, clearly indicated its willingness to consider alternate sources, and in fact, received four proposals, two from the manufacturers referenced in the solicitation and two from other companies. The apparent low offeror is Flex Enterprises, Inc., offering an alternate product. Thus, the RFP did not preclude offers of hoses by other manufacturers and did not unduly restrict competition.

We anticipate that, for future procurements, the agency will seek to obtain the necessary manufacturing data and/or drawings or consider the acquisition of data use rights, so that competition may be further enhanced. See Department of Defense Federal Acquisition Regulation Supplement, 48 C.F.R. §§ 227.403 (1985).

The protest is dismissed.



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