



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ramer Products Ltd.--Reconsideration

File: B-224027.7

Date: September 28, 1987

DIGEST

1. The General Accounting Office will not consider a protest that fails to set forth a detailed statement of the legal and factual grounds of protest, and does not include copies of relevant documents.
2. Protest based upon alleged improprieties in a solicitation--vague and ambiguous specifications and evaluation criteria--that are apparent prior to the closing date for receipt of initial proposals is untimely where not filed prior to that date; a protest included in the initial proposal is not a timely pre-opening protest, since there is no requirement that the agency open or read proposals on or before the closing date.
3. Patent infringement allegations are not encompassed within the General Accounting Office's bid protest function.

DECISION

Ramer Products Ltd. requests reconsideration of our dismissal of its August 29, 1987, protest against award of a contract under request for proposals No. DAKF31-86-R-0138, issued by the Department of the Army for ski bindings. We affirm the dismissal.

This procurement, begun in 1986, was the subject of a previous protest by Ramer. In East Norco Joint Venture, et al., B-224022, et al., Jan. 5, 1987, 87-1 CPD ¶ 6, aff'd Department of the Army, et al., B-224022.2, et al., Apr. 9, 1987, 87-1 CPD ¶ 389, we sustained Ramer's protest against the rejection of its proposal as technically unacceptable; we found that the agency had acted improperly by requesting samples from the proposed awardee while evaluating Ramer on the basis of previously-purchased ski bindings that its proposals indicated had been specifically modified in critical areas. Pursuant to our recommendation, the Army requested samples from Ramer and, after negotiations, requested best and final offers (BAFOs).

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Ramer raised several allegations in its August 29 protest, but we dismissed the protest because Ramer failed to comply with the requirement in our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1987), that protests set forth a detailed statement of the legal and factual grounds of protest, including copies of relevant documents. As part of its protest, Ramer alleged that the solicitation included vague and ambiguous specifications and evaluation criteria, and we thus also dismissed these allegations because they were based upon alleged improprieties in the solicitation that were apparent prior to the closing date for receipt of proposals, but were not protested prior to the closing date, as also required by our Regulations. 4 C.F.R. § 21.2(a)(1).

Ramer first provides details in support of its August 29 allegations in its request for reconsideration, and claims that it could not provide "adequate specific justifications" in its protest because it had not yet received a debriefing from the agency. We find, however, that this information does not provide any basis for reconsidering the matter.

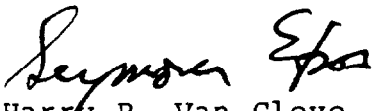
Regarding its allegation of vague and ambiguous specifications and evaluation criteria, Ramer states that in its initial proposal it questioned some of the improprieties in the solicitation. Ramer seems to argue that this satisfied any requirement for a timely, detailed protest. Protest allegations raised in a proposal, however, do not constitute a timely preopening protest to the agency, since there is no requirement that an agency open or read proposals on or before the closing date. East Norco Joint Venture, et al., supra.

Ramer also alleged in the August 29 protest that award was not based on valid technical considerations. This argument also appears untimely. Although Ramer states it could not furnish details on this and other issues until after its September 1 debriefing, documents submitted by Ramer indicate that it was advised during negotiations of the technical deficiencies and weaknesses subsequently cited in the written debriefing. Ramer responded to this deficiency notice received during negotiations by protesting to the contracting officer, disputing the evaluation and requesting more specific information needed before the firm could provide a BAFO. The Army proceeded with receipt of BAFOs without addressing Ramer's concerns; this constituted adverse agency action on the agency level protest, and since the details of this allegation were first provided to our Office with Ramer's reconsideration request, more than 10 working days after the adverse agency action, the allegation is untimely. 4 C.F.R. § 21.2(a)(3).

Ramer alleged in its protest that award was not made to the lowest qualifying bidder, since its offer was low and it believes the agency never properly found its offer technically unacceptable. As we already have found Ramer's challenge of the evaluation to be untimely, there is no reason for questioning the award to the next low acceptable offeror on this basis.

Ramer claimed in its protest that the awardee would infringe Ramer's patents. Patent infringement allegations are not encompassed within our bid protest function, and we thus will not consider this allegation. Malzahn Co., B-225813, June 5, 1987, 87-1 CPD ¶ 574.

The dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel