



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Astronautics Corporation of America
File: B-231907
Date: November 3, 1988

DIGEST

Protest that solicitation issued by contracting agency conflicts with protester's mandatory requirements contract is rendered academic by expiration of protester's contract.

DECISION

Astronautics Corporation of America protests the issuance of request for proposals (RFP) No. F09603-88-R-66205, for replenishment spare parts for Standard Remote Terminals (SRTs), by the Department of the Air Force, Warner Robins Air Logistics Center, Georgia. The protester argues that the agency should instead have placed an order against its requirements contract No. DAEA18-85-D-0056 and requests that the solicitation be canceled.

We dismiss the protest.

On December 12, 1984, the U.S. Army Information Systems Management Activity awarded the protester a requirements contract for regular maintenance services, for continuation of existing leases and for special maintenance services for SRTs for fiscal year (FY) 1985 with three 1-year options, which have been exercised. Under the contract, the protester's geographical area of responsibility for maintenance of SRTs includes all SRT sites worldwide.

The contract contains a version of Federal Acquisition Regulation § 52.216-21 making the contract mandatory for activities specified in the schedule. Modification No. 3, dated February 18, 1985, formally added a list of spare parts that could be special ordered by Department of Defense (DOD) activities from the protester under the contract. However, the contract, with the exercise of the third and final option, only permits DOD agencies to issue orders for spare parts from October 1, 1987, until September 30, 1988.

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Thus, the protester's requirements contract expired on September 30, 1988.^{1/}

Prior to the expiration of the contract on September 30, the Air Force, on June 23, published a notice in the Commerce Business Daily of its intention to issue the solicitation to the Ampex Corporation and to Astronautics for a quantity of a replenishment spare part, including a filter identical to one of the spare parts under the protester's requirements contract. On July 6, Astronautics filed this protest, asking that the proposed solicitation not be issued and that we direct the agency to award a contract to Astronautics, in accordance with its requirements contract. The RFP was issued to eight firms (six other firms had expressed interest in the CBD synopsis) on August 15, and initial proposals were received from four firms on September 14. No award had been made prior to the expiration of the protester's contract on September 30. (The agency has withheld award pending our decision.) Further, the terms of the RFP require delivery 30 days after receipt of order so that delivery will not occur until December 1988 (the new fiscal year 1989) at the earliest.^{2/}

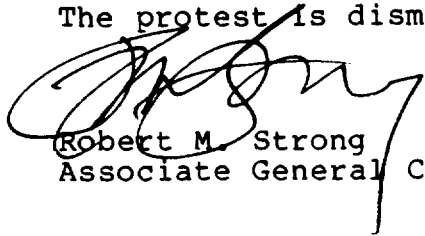
Since the agency's requirements are for delivery of the spare parts in the fiscal year following the expiration of the protester's contract, and since the actual delivery dates under the solicitation fall well beyond the expiration date of the protester's contract, we see no conflict between the solicitation and the expired contract. Thus, we think that the protester's concerns, expressed in its initial

^{1/} A follow-on contract, No. DAEA18-88-D-0061, awarded to Astronautics on October 3, 1988, by the Army, covers only special on-site maintenance assistance, and parts and repair support on systems maintained by the government. That contract does not cover replenishment spare parts and is not at issue here.

^{2/} We also note that the initial procurement request which is the basis for this solicitation requested delivery of the item in November 1988, after expiration of the protester's requirements contracts.

protest of July 6, that the proposed solicitation would conflict with its requirements contract, is academic, see Astronautics Corporation of America, B-229812 et al., Mar. 25, 1988, 88-1 CPD ¶ 307, since the solicitation does not in fact conflict with the contract's terms.^{3/}

The protest is dismissed.



Robert M. Strong
Associate General Counsel

^{3/} In its comments on the agency report, Astronautics argues that the Air Force should have ordered the item from the protester when the need allegedly arose in July 1988. Astronautics states that the Air Force's failure to do so "subverted" its requirements contract. However, the record shows that the essential requirement for this item was for November 1988, at the earliest. Further, even assuming an earlier requirement date, we think that the protester is here asserting a breach claim for damages which is properly for resolution under the standard "disputes" procedures of the contract.