

Turner



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: UNARCO Material Handling
File: B-239911
Date: July 9, 1990

D. Bruce Wise, for the protester.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that agency's specifications for equipment are unduly restrictive is untimely when not filed prior to the time for receipt of initial proposals, since the alleged improprieties were apparent from the face of the solicitation.
2. Protester's offer was properly rejected as technically unacceptable where offer did not meet solicitation specifications.

DECISION

UNARCO Material Handling protests the rejection of its offer based on allegedly unduly restrictive specifications contained in request for proposals (RFP) No. F33600-90-R-0044, issued by the Department of the Air Force for the design, fabrication and testing of a high density storage system at Kelly Air Force Base, Texas.

Based on the protester's initial submissions, we dismiss the protest.

The closing date for receipt of proposals was March 13, 1990. UNARCO timely submitted its proposal. The agency reviewed UNARCO's proposal and by questionnaire dated March 23 advised UNARCO of provisions of its proposal which were considered ambiguous and noncompliant. For example, the RFP specification for sideloaders required a man-up, four directional sideloader. The protester offered a man-down sideloader in its proposal. The agency's proposal review explicitly stated that the man-down model was

unacceptable. The manufacturer of the proposed man-down sideloader contacted the agency by letter dated April 12 on behalf of the protester. The letter challenged the RFP requirement of a man-up configuration for the sideloaders and argued that the man-down configuration should not be precluded because the man-down is domestically manufactured and is the safest and the less expensive of the two models. The agency in its response to the firm, dated April 23, stated that the man-up configuration was preferred and specifically explained why the manufacturer's vehicle was not acceptable.

UNARCO submitted a revised proposal offering the man-down vehicle. On May 4, the agency sent UNARCO the results of its evaluation of UNARCO's revised proposal, and again rejected UNARCO's proposed man-down vehicle. UNARCO was asked to propose a substitute but failed to do so. On May 29, UNARCO's proposal was rejected as technically unacceptable, for failing to meet the man-up configuration for the sideloaders and seven other requirements. UNARCO filed this protest on June 4, 1990.

To the extent that UNARCO is alleging that the specifications are unduly restrictive and overstate the agency's minimum needs, this aspect of the protest is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), a protest based on alleged improprieties in a solicitation, such as unduly restrictive specifications, which are apparent prior to the time for receipt for proposals, must be filed before that time. Soltec Corp.--Request for Recon., B-234598.2, Mar. 28, 1989, 89-1 CPD ¶ 321. In this regard, the RFP specified a man-up, four directional sideloader and contained seven other item/descriptions to which the protester objects. Therefore, the basis of the protest should have been immediately apparent upon receipt of the RFP. UNARCO failed to protest these specifications until June 4, 1990, approximately 12 weeks after the March 13, 1990, closing date.^{1/} It is incumbent upon an offeror to file a protest of allegedly restrictive solicitation requirements before proposals are due so that corrective action, if warranted, can be taken with the least disruption to the procurement process. Soltec Corp.--Request for Recon., B-234598.2, supra. There is no evident reason, and UNARCO has brought none to our

^{1/} The letter sent by the manufacturer to the agency challenging the RFP requirement for a man-up sideloader was also untimely as it was submitted approximately 1 month after the closing date for receipt of proposals.

attention, as to why its protest could not have been filed prior to receipt of initial proposals. Consequently, UNARCO's argument that the agency's specifications were unduly restrictive of competition is untimely and will not be considered on the merits. See Community Metal Prods. Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41.

Based on UNARCO's protest submissions, we do not find the rejection of UNARCO's proposal to be unreasonable because, as admitted to by the protester, its proposal did not meet RFP specifications. Under the circumstances, the agency had no choice but to reject the proposal. See Essex Electro Eng'rs, Inc., B-229491, Feb. 29, 1988, 88-1 CPD ¶ 215.

The protest is dismissed.


Ronald Berger
Associate General Counsel