



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Singer Hosiery Mills, Inc.

File: B-244908

Date: October 30, 1991

Paul E. Marth, Esq., Forman, Marth, Black & Angle, for the protester.
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Steven W. DeGeorge, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed almost 5 weeks after protester was notified of rejection of its proposal for six of seven items is untimely since protester failed to diligently pursue information disclosing the basis for the rejection.

DECISION

Singer Hosiery Mills, Inc. protests the awards made under request for proposals (RFP) No. DLA100-90-R-0462, issued by the Defense Logistics Agency, for seven styles of wool socks. Singer contends that six out of the seven styles of socks which it proposed were improperly found nonconforming by the agency.

We dismiss the protest.

The RFP, issued on October 19, 1990, sought proposals for the manufacture and delivery of 6,770,088 pairs of men's wool socks divided among seven specified styles, with an option to acquire an additional equal amount. The RFP provided for award to the responsible offeror whose offer conformed to the solicitation and was considered most advantageous to the government, price and other factors considered. The RFP further provided that technical proposals were to consist of two product demonstration models (PDMs) for each of the seven sock styles and information attesting to the offeror's commitment to customer satisfaction and product support as well as regarding prior experience and performance.

Seven proposals were received by the RFP closing date of December 18. Based upon an evaluation of the PDMs submitted by the offerors and information provided in the technical

proposals a competitive range was established by the agency consisting of five offerors, including Singer. In performing its technical evaluation, the agency used a rating system whereby proposals were rated unacceptable, marginally acceptable or acceptable in the areas of PDMs, commitment to customer satisfaction and past performance. Singer's PDMs for six of the sock styles were found marginally acceptable because the labels did not state an overall fiber blend in conformance with the requirements of the RFP. Following establishment of the competitive range, discussions were held during which offerors were advised of their deficiencies and provided an opportunity to submit revised proposals.

Singer submitted a revised proposal which included substitute PDMs for the six styles found marginally acceptable by the agency during the initial evaluation. Singer's revised proposal was evaluated and again found marginally acceptable for styles one through six. While the substitute PDMs were considered compliant with the fiber blend requirements of the RFP, the agency determined that they were deficient because the terry portion of the PDMs had frayed edges.

Because at least one acceptable proposal existed for each of the styles of socks required, the contracting officer decided to request best and final offers (BAFO) from offerors for only those styles which had been rated acceptable. Thus, by letter of May 17, 1991, Singer was requested to submit a BAFO limited to style seven. The letter contained the following statement:

"Your PDM style #7 is the only PDM found to be in conformance to the statement of work. Therefore, it is the only PDM that will be considered."

On May 21, Singer submitted its BAFO to the agency for style seven only. On June 20, contracts were awarded to the lowest cost offerors for each of the seven sock styles. Singer did not submit the low offer for style seven and therefore did not receive an award. By letter dated June 24, Singer requested a debriefing. This debriefing was held on June 27, and Singer was advised of the specific deficiencies found with respect to its PDMs for styles one through six.

Singer contends now that the agency improperly found its proposal nonconforming relative to styles one through six. Singer disputes the agency's determination that fraying around the terry stitch constituted a defect in its PDMs, arguing that such fraying is consistent with accepted custom of the trade and not in violation of the RFP.

Bid protests are serious matters which require effective and equitable procedural standards to assure both that parties will have a fair opportunity to present their cases and that protests can be resolved without unduly disrupting the procurement process. Amerind Constr., Inc.--Recon., B-236686.2, Dec. 1, 1989, 89-2 CPD ¶ 508. Accordingly, our Regulations contain strict timeliness requirements for filing protests, and to ensure that those long-standing requirements are met, a protester has an affirmative obligation to diligently pursue information that forms the basis for its protest. Illumination Control Sys., Inc., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546.

In our view, Singer failed to diligently pursue the basis for its protest. The record shows that Singer knew when it received the agency's May 17 letter that its proposed PDMS for styles one through six had been found nonconforming. However, Singer did not object at that time and in fact acted consistent with the agency's notice by limiting its BAFO to style seven. The record further shows that between May 17 and June 24 when a debriefing was requested--a period of almost 5 weeks--Singer made no attempt to learn the specific reasons for the agency's rejection of styles one through six. This was despite the fact that Singer was expressly notified of its rejection by the agency.

Based upon the record, we find that Singer failed to satisfy the requirement for diligent pursuit. The protest is therefore untimely and will not be considered. See Continental Tel. Co. of California, B-222458.2, Aug. 7, 1986, 86-2 CPD ¶ 167.

The protest is dismissed.



John Brosnan
Assistant General Counsel