



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Automated Power Systems, Inc.

File: B-256510; B-256510.2

Date: June 23, 1994

DECISION

Automated Power Systems, Inc. protests the terms of invitation for bids (IFB) No. DTCG36-94-B-B5B009, issued by the United States Coast Guard, Department of Transportation (DOT), for solid state flashers, which are used as marine aids to navigation. Automated Power complains that the IFB is ambiguous and fails to provide sufficient information to allow bidders to prepare their bids and that another bidder's product was improperly included on the required qualified products list (QPL).

We dismiss the protest because the protester is not an interested party.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1994). Determining whether a party is interested involves the consideration of a variety of factors, including the nature of issues raised; the benefit or relief sought by the protester; and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

The IFB, issued December 21, 1993, restricted award to products listed on the QPL. Bid opening was March 23, 1994. Automated Power's flasher was removed from the QPL on February 9, because the protester had closed its manufacturing facility due to financial difficulties. Removal of a product from a QPL is warranted where the manufacturer either stops manufacturing the product, or changes its plant location and does not seek reevaluation following the change in location. See Federal Acquisition Regulation (FAR) § 9.207.

To be eligible for award under a solicitation with a QPL requirement, an offeror's product must satisfy the requirement for the QPL prior to award. FAR §§ 9.201. Under 10 U.S.C. § 2319(c)(3) (1988), a potential offeror must be given an opportunity to demonstrate that its product meets or can meet the approval standards before the date for award. See also FAR §§ 9-202(c), 9-205. However, the agency is not required to delay its procurement to permit an offeror whose product is not on the QPL a chance to qualify its product, nor is the agency required to consider an offer from an offeror whose product is not listed on the QPL where that offeror does not satisfactorily demonstrate that its product can qualify for the QPL prior to award. See FAR §§ 9.202(e); 9.206-1(c); Florida Ordinance Corp., B-247363.4, Aug. 31, 1992, 92-2 CPD ¶ 138.

Here, the record establishes that the protester currently does not have the capacity to reestablish its manufacturing capability in time to requalify its product for listing on the QPL prior to award. In fact, there does not appear to be any reasonable prospect, given Automated Power's failure to take any steps to restore its manufacturing capacity, that Automated Power could requalify its product at any time in the foreseeable future.¹ In this regard, the Coast Guard submitted numerous letters from Automated Power in which Automated Power over the previous year consistently described its dire financial position, its inability to manufacture a product due to a lack of a manufacturing facility, and its financial inability to retain another place of manufacture.

Since the protester has not shown that it reasonably could be expected to requalify its product prior to award, Automated Power would not be eligible for award under this solicitation. See FAR § 9.206-1(c); see generally Radalab, Inc., B-225662.2, May 15, 1987, 87-1 CPD ¶ 519 (protester bears risk of its product not being on QPL prior to award where it does not seek to qualify its product until the procurement is well underway). Since Automated Power would

¹It appears that the protester's plan for reestablishing its manufacturing facilities rests entirely on the protester's hopes of receiving substantial financial relief under its request for extraordinary contractual relief from the Coast Guard pursuant to Public Law 85-804. The record indicates that the disposition of Automated Power's claim is not imminent.

not be in line for award even if its protest were sustained,
Automated Power is not an interested party to protest this
procurement.

The protest is dismissed.


For James A. Spangenberg
Assistant General Counsel