

Becker 152549



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Air Techniques, Inc.

File: B-258166

Date: September 1, 1994

DECISION

Air Techniques, Inc. protests the award of a contract to Defiance Electronics, Inc. by the Defense Logistics Agency under solicitation No. DLA120-93-R-0738.

Air Techniques, the third low offeror, is not an interested party entitled to raise this matter. 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. Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. 4 C.F.R. § 21.0(a); 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.

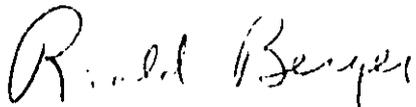
While Air Techniques, in response to the agency request for summary dismissal, also challenges any award to the second low offeror this issue is untimely raised. Air Techniques asserts that the second low offeror received preferential treatment through the relaxation of specification and objects to any award to that offeror on that basis. The specifications were relaxed, however, by a solicitation amendment issued in January of 1994. It should have been evident to Air Techniques at that time what the effect of the specification change would be with respect to potential competitors.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1). This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the

solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330. Since Air Techniques did not raise this matter in a timely fashion, we will not consider it.

Accordingly, we do not view Air Techniques as an interested party entitled to protest award to the low offeror.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the typed name and title.

Ronald Berger
Associate General Counsel