



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: H. Koch & Sons Co.--Reconsideration

File: B-259940.2

Date: March 21, 1995

DECISION

H. Koch & Sons Co. requests reconsideration of our decision dismissing its protest of the award of a contract to Pacific Scientific Co. by the Defense Logistics Agency, Defense General Supply Center, under request for proposals (RFP) No. SPO460-94-R-1855, for shoulder harness inertia reels.

We affirm the dismissal.

In its initial protest, the protester asserted that the RFP required that any product offered be listed or approved for listing on the applicable Qualified Products List (QPL). The RFP listed the names of two companies--Pacific Scientific and Koch--along with their relevant product numbers. Koch argued that the award to Pacific Scientific was improper because the awardee's part was removed from the applicable QPL in August 1991 and has not been reinstated.

We dismissed the protest as untimely. We explained that Koch's challenge to the qualification of the awardee's product was in effect a protest of an alleged solicitation impropriety, since the awardee's product was listed in the RFP. See Sonetronics, Inc., B-237267, Feb. 12, 1990, 90-1 CPD ¶ 178; Teledyne CME, B-223609, Sept. 23, 1986, 86-2 CPD ¶ 338. Therefore, to be timely, any protest on this ground had to have been filed before the time set for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1995). Since the protest was not filed until after award to Pacific Scientific, we concluded that the protest was untimely.

In its request for reconsideration, Koch in essence asserts that the listing of the Pacific Science product in the RFP did not constitute notice that the listed product was considered to be qualified. Koch argues instead that the listing merely indicated that Pacific Scientific was the only source which had ever supplied the product.

In response to the protester's request for reconsideration, the agency argues that, contrary to the protester's assertion in its initial protest, the RFP in fact contains no qualification requirement for the product sought. We agree. As the agency points out, if a qualification

requirement is to be imposed, the solicitation must contain Federal Acquisition Regulation (FAR) § 52.209-1, notifying offerors of the requirement. FAR § 9.206-2; Electroswitch, B-246786, Mar. 27, 1992, 92-1 CPD ¶ 315. The RFP here does not contain this provision or any other provision which would have led offerors reasonably to conclude that the product offered must be on a QPL. See Comspace Corp., B-237794, Feb. 23, 1990, 90-1 CPD ¶ 217.

In support of its position, the protester points to the Note appearing after the item description in the RFP, which provides as follows:

"Note: A part marking reference which indicates conformance to Mil-R-8236 or a Mil-R-8236 government type designation is not permitted unless the product holds a current qualification under Mil-R-8236."

The protester asserts that the referenced military specification, Mil-R-8236, includes a qualification requirement, and argues that this Note effectively incorporated Mil-R-8236, and thus the qualification requirement, into the RFP. The agency responds that this was merely a "product marking" note, advising offerors that no product may be marked as compliant with the military specification unless it is in fact qualified under the specification. We agree that the Note did not incorporate the military specification into the RFP; there simply is nothing in the language of the Note to support the protester's contrary position. Rather, as the agency points out, the Note merely advised offerors not to mark products with a reference to Mil-R-8236 unless they were qualified products. In fact, the RFP nowhere defined the government's requirements in terms of Mil-R-8236. Rather, the RFP contained a "products offered" clause which advised offerors that the items described by manufacturer's name and part number in the item description had been found acceptable to the government, and, if they were offering other than the exact products described in the item description, their products had to be "either identical to or physically, mechanically, electrically and functionally interchangeable with" those products. There was no requirement that the products conform to Mil-R-8236.

The protester also argues that the agency's past practice--specifically, Koch contends that all past procurements for this item have required qualification--led it to conclude that a qualification requirement applied here. In the absence of any provision in the RFP incorporating a qualification requirement, however, it simply was not reasonable for the protester to assume that the agency intended to impose one.

Given our conclusion that there was no qualification requirement in the RFP, the protester's contention that it was improper to accept Pacific Scientific's product because it was not qualified fails to state a valid basis for protest. Accordingly, we affirm our prior dismissal. See 4 C.F.R. § 21.3(m).

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

Ronald Berger
Associate General Counsel