



## Decision

**Matter of:** Geodata Systems Management, Inc.

**File:** B-416798

**Date:** October 1, 2018

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Mark H. Wilson, Esq., Whitcomb, Selinsky, McAuliffe PC, for the protester.  
Ernest E. Price, Ropers, Majeski, Kohn & Bentley, for American Pacific Plastics Fabricators, Inc., an intervenor.  
Nicole M. Franchetti, Esq., Defense Logistics Agency, for the agency.  
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging terms of solicitation is dismissed where (1) the protest was untimely filed; and (2) the protest seeks to have solicitation interpreted in a manner that would result in more restrictive competition that would exclude other firms, and Government Accountability Office generally does not consider such allegations.

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### DECISION

Geodata Management Systems, Inc., of Middlesburg Heights, Ohio, protests the terms of request for quotations (RFQ) No. SPE8E6-18-T-2140, issued by the Defense Logistics Agency (DLA) for naval gunnery target balloons. Geodata maintains that the solicitation is for an item that only it is authorized to supply, and that the solicitation impermissibly permits firms to offer an alternate product manufactured by American Pacific Plastics Fabricators, Inc. (APPF).

We dismiss the protest.

The RFQ solicits quotations for two possible items, national stock number (NSN) part 6920016290823, which is the part number for a product manufactured by the protester, and NSN part 6920-17, which is the part number for a product manufactured by APPF. RFQ at 5.<sup>1</sup> In effect, the protester maintains that the RFQ improperly allows other firms

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<sup>1</sup> The protester claims that its part number is a product that it refers to as the “killer tomato.” Geodata maintains that it holds an exclusive trademark for that name, along  
(continued...)

to compete for the agency's requirement, because it is the only firm that is authorized to manufacture the "killer tomato" naval gunnery target balloons.

We dismiss the protest for two reasons. First, it was untimely filed. Our Regulations provide that protests based on solicitation improprieties that are apparent on the face of the solicitation must be filed no later than the deadline for submission of bids, proposals or quotations. 4 C.F.R. § 21.2(a)(1). The RFQ required submission of quotations by 3:00 p.m. on September 10, 2018.<sup>2</sup> However, Geodata did not file its protest with our Office until 5:25 p.m. on September 10. Accordingly, its protest was not timely filed and we therefore decline to consider it for that reason.<sup>3</sup>

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with several other product names, including "killer kiwi," "killer lemon," "killer orange," "killer banana," "target x-ray," and "bogie blimp." Protest at 3. In contrast, APPF maintains that the question of whether or not Geodata has exclusive trademark rights to the name "killer tomato" was the subject of recent litigation in U.S. district court. According to APPF, this litigation ended in a settlement agreement that effectively permits both parties to use the trade name "killer tomato" and precludes either party from claiming exclusivity to the trade name "killer tomato." Letter of Intervention at 3-5. (The intervenor represents that the name "killer tomato" derives from what it describes as a 1978 B-grade science fiction movie called "Attack of the Killer Tomatoes." Id. at 2.)

We need not resolve the question of whether either party properly is entitled to use the trade name "killer tomato." Any alleged violation of the protester's claimed trademark rights, as well as any alleged violation of the settlement agreement that APPF maintains was executed between it and the protester amount to a dispute between private parties that we do not consider. Ellwood National Forge Co., B-402089.3, Oct. 22, 2010, 2010 CPD ¶ 250 at 4.

<sup>2</sup> The protester argues that the RFQ permitted submission of quotations until the close of business on September 10. We disagree. The RFQ provides for the submission of quotations "on or before close of business" on September 10. RFQ at 1, Block 10. However, the RFQ also expressly incorporates the terms of the DLA Master Solicitation For Automated Simplified Acquisitions, id. Block 11, which expressly provides as follows: "The time for receipt of quotations is 3:00 P.M. Eastern Standard Time, or when applicable, Eastern Daylight Savings Time on the return date." DLA Master Solicitation, Part 1, Section 2(c).

<sup>3</sup> Geodata argues that, in the event that we conclude that the protest is untimely, we should nonetheless consider the protest based on the "good cause" exception to our timeliness requirements. 4 C.F.R. § 21.2(c). The protester has not explained what "good cause" precluded it from timely filing its protest. Nonetheless, even if the protester had made such a showing, we would not consider the protest for the additional reasons outlined in this decision.

Second, Geodata's protest essentially amounts to an allegation that the RFQ should have been more restrictive of competition and excluded offerors not providing its exact product. However, our Office generally does not consider protest allegations that a procurement should be more restrictive. CASE LLC, B-404954, July 7, 2011, 2011 CPD ¶ 167 at 3-4. We therefore dismiss the protest for this reason as well.

The protest is dismissed.<sup>4</sup>

Thomas H. Armstrong  
General Counsel

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<sup>4</sup> As a final matter, APPF requests that we recommend it be reimbursed the costs associated with its participation in the protest. We are unaware of any basis that could provide our Office with authority to make such a recommendation on behalf of an intervenor, and APPF has not directed our attention to any such authority. We therefore decline to make such a recommendation.