

Witherly



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Astrophysics Research Corporation

File: B-224378

Date: July 25, 1986

DIGEST

Protest regarding an alleged solicitation impropriety apparent on the face of the solicitation must be filed prior to the closing date for receipt of initial proposals and will not be considered by GAO when it was initially filed with the contracting agency after the closing date.

DECISION

Astrophysics Research Corporation (ARC) protests the terms of request for proposals (RFP) No. N00406-86-R-0280, issued by the Department of the Navy's Naval Supply Center, Puget Sound, Bremerton, Washington, for x-ray machines. We dismiss the protest as untimely.

ARC submitted an offer by the February 5, 1986, closing date for receipt of initial proposals. However, in a cover letter to its proposal, ARC noted that its machines used a three-phase power supply rather than the single phase required by the RFP. On March 5, ARC responded to a first round of best and final offers, stating that its machine conformed to all salient characteristics of the solicitation except that it required a three-phase power supply. By letter dated April 30, 1986, the Navy notified ARC that its proposal to use a Phasemaster Rotary Phase Converter to obtain three-phase power from a single-phase power source was unacceptable and gave ARC one last opportunity to meet the single-phase power requirement. On May 11, ARC protested to the Navy about the Navy's rejection of its proposal to use the converter and the Navy's statement that three-phase wiring was not available. ARC protested the Navy's June 16, 1986, denial of its protest to our Office on June 24, 1986. ARC requests that an outside party quote an installation price for installing three-phase wiring and that if the installation price plus ARC's price for the equipment is less than the next competitive offer, it be awarded a contract.

Our Bid Protest Regulations state that where an initial protest of an alleged solicitation impropriety has been filed with the contracting agency, a protest to our Office, even if filed within 10 working days

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after formal notification of initial adverse agency action, will be considered only if the initial protest to the agency was filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(3) (1986). ARC did not file its protest with the Navy about the solicitation's requirement for a single-phase power supply until after the closing date for receipt of initial proposals and, therefore, its initial protest to the agency was untimely. Consequently, we will not consider the protest, notwithstanding the fact that the agency may have considered it, because our timeliness requirements provide objective criteria which may not be waived by action taken by an agency. See BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel