

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-214778.3, B-214778.4 **DATE:** June 8, 1984

MATTER OF: Cirtech Corporation;
Alpha Components, Inc.

DIGEST:

1. Protest made after the closing date for the receipt of best and final offers that solicitation of best and final offers was improper is untimely.
2. Protest that awardee was given unfair advantage in negotiations is rendered moot by cancellation of solicitation.

Cirtech Corporation (Cirtech) and Alpha Components, Inc. (Alpha), protest the Department of the Air Force's decision to cancel solicitation No. FD2040-83-32470D for filters. Both firms had protested previously that they were awarded a portion of the contract on the basis of their initial proposals, but that after award the Air Force improperly requested submission of best and final offers and ultimately proposed award to Filtronetics.

After these initial protests were filed, the Air Force determined that a substantial change in the quantity of the filters needed took place and canceled the solicitation. Alpha and Cirtech allege that the Air Force canceled the solicitation solely to moot their valid protests and both seek the reinstatement of the original proposed awards.

We dismiss the protests.

By letter dated February 15, 1984, the Air Force advised Cirtech and Alpha that they were the successful offerors under this solicitation on the basis of their initial proposals. On March 9, 1984, offerors were notified by TWX of an amendment requesting that best and final offers be submitted by March 14, 1984, at 4:15 p.m. Alpha submitted its best and final offer without objection to the procedure. Cirtech filed a response to this amendment by TWX on March 14, 1984, acknowledging receipt of the Air Force TWX and stating that the Air Force's action in requesting best and final offers "appears to give offerors other than Alpha and Cirtech an unfair advantage since your earlier written communications indicated that the contract would be split between Cirtech and Alpha."

In their initial protests to this Office, Alpha and Cirtech contended that it was improper to solicit best and final offers because they were told after the receipt of initial offers that they would receive award. Essentially, Alpha and Cirtech contend that the solicitation of best and final offers was improper.

Our Bid Protest Procedures require that in the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated therein, must be protested not later than the next closing date for the receipt of proposals following the incorporation. 4 C.F.R. § 21.2(b)(1) (1983). Since Alpha did not protest the request for best and final offers before the closing date for the receipt of best and final offers, its protest on this basis is untimely. John Crane-Houdaille, Inc., B-212829, January 20, 1984, 84-1 CPD 89, affirmed, B-212829.3, April 9, 1984, 84-1 CPD 395.

In any event, we note that the record before us does not support the protesters' assertions that they had been awarded contracts based on initial proposals. The Air Force letter of February 15, referred to by the protesters in support of their contention, clearly advises it is a "Pre-Award Notice of Unacceptable Offers." The letter also advised that "the apparent successful offerors . . ." were Cirtech and Alpha, and further stated that unsuccessful offerors could challenge the small business size status of the apparent successful offerors. Therefore, it does not appear that this notice was to serve as award of contracts to Alpha and Cirtech.

Finally, while the protesters argue that Filtronetics was given an unfair advantage in the negotiations, cancellation of the solicitation has rendered moot this ground of protest.

Harry R. Van Cleve
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Acting General Counsel

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