



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

Fitzmaurice
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[Withdrawal of Protest Concerning U.S. Navy Solicitation]

Seward & Kissel ^{reg.} DLG-00888
Counsel for Maryland Machine ^{org. cor.} DLG-00889
Tool Sales, Inc.
1737 H Street, N. W.
Washington, D.C. 20006

Attention: Anthony C. J. Nuland, Esq.

Gentlemen:

This will acknowledge your letter to our Office dated January 17, 1979, withdrawing on behalf of Maryland Machine Tool Sales, Inc., its protest concerning solicitation No. N00600-77-R-1623 issued by the United States Navy.

In your letter, you indicate that the difficulties which your client has encountered while bidding on Navy contracts reflect a general bias on the part of the Navy against foreign-source machinery. You state that during the past 2 years Maryland Machine Tool Sales, Inc., has been low bidder on a number of Navy solicitations but, except for one bid, was not awarded the contracts because the technical evaluations performed on the bids, as well as the negotiations and one preaward survey carried out in connection with the bids, imposed significant impediments to a bidder proposing to furnish a foreign-made machine other than one manufactured in the United Kingdom. Based on this, you believe that it would be fairer to small businesses if, instead of specifying in its solicitations that bids offering to furnish foreign-source machinery would be accepted, the Navy made it clear that it did not intend to purchase foreign-source machinery unless manufactured in the United Kingdom.

Because you have raised serious allegations concerning whether the Navy is following its own procurement procedures, we are referring your letter and our files on this matter to our Procurement and Systems Acquisitions Division for review and will notify you of the results.

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Letter

You also state that our Bid Protest Procedures appear to work to the disadvantage of unsuccessful bidders who decide to file a protest with our Office, especially small businesses which, although needing the assistance of counsel to interpret the procurement regulations and bid protest procedures, can little afford the expense involved. More specifically, you maintain that our Bid Protest Procedures work to the disadvantage of protesters by subjecting them to short filing and response requirements while according open-ended response times to the procurement activity whose actions are being protested. Further, you believe it is unfair for our Office to strictly enforce the requirement found at section 20.2(b)(2) of our Bid Protest Procedures which requires that all bid protests be filed within 10 working days "after the basis for the protest is known or should have been known." You contend that our interpretation of this provision requires an unsuccessful bidder after bid opening to make continuing inquiry of the procuring activity, and of other offices or agencies which might have knowledge of the procuring activities' decisions, in order to uncover, at the earliest possible date, any indications that its bid has been rejected. You conclude that it is unreasonable to expect anyone, except possibly an attorney versed in procurement practice, to understand an interpretation which requires a protest to be filed before the receipt of a document from the procuring activity announcing the rejection of the bid and the reasons for that rejection.

Our Bid Protest Procedures are intended to provide fair and equitable procedural standards for all parties to a protest. We believe this can best be accomplished by treating all protesters, both large and small businesses, equally. Although we are aware of some of the special problems which small businesses may have, we believe the integrity and impartiality of the bid protest system is best served by requiring all protesters to adhere to the same timeliness standards.

Our timeliness rules were not promulgated to frustrate attempts by businesses to protest what are believed to be violations of procurement laws, regulations, or procedures. However, to raise a legal objection to the

award of a Government contract is a serious matter. At stake are not only the rights and interests of the protester, but those of the contracting agency and other interested parties. Effective and equitable procedural standards are necessary so that parties have a fair opportunity to present their cases and protests can be resolved in a reasonably speedy manner. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly burdening and delaying the procurement process and, at the same time, to permit us to decide the matter while it is still practicable to take effective action with respect to the procurement where the circumstances warrant.

We do not expect a bidder to make continuing inquiries to the procuring agency or to any other office or agency in order to detect some subtle indication that its bid has been rejected. Our timeliness rules are not a trap for the unwary. While it is true that we strictly enforce our timeliness rules for filing protests, after a protest has been timely filed we are willing to grant a protester an extension of time for submitting a later response if the request for such an extension can be justified. However, we do require a bidder to be alert to the stages of the procurement process so that any protest will be filed within 10 working days after a reasonably informed bidder knows or should have known the basis for its protest. A bidder is not required to wait until the procuring agency actually rejects its bid before protesting, but is expected to act as soon as it knows or should have known the intended grounds for rejection of its bid. Such a requirement helps avoid undue delay in the procurement process. However, it also makes it necessary for a bidder to have a general understanding of the procurement process as well as a general understanding of commonly used procurement terms.

Further, we recognize that the assembly of a report responsive to a protest is frequently not an easy task; therefore, we believe that 25 working days is generally a reasonable period in which to expect compliance from an agency. While we do not approve of an agency taking

a longer time to submit its report, we cannot compel a contracting agency to submit a protest report to our Office by a given date.

We trust that this clarifies the purpose of our timeliness rules and how they are applied.

Sincerely yours,



Robert F. Keller
Deputy Comptroller General
of the United States