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PL-1
Mr. Vickers



DECISION

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

FILE: B-194976

DATE: October 31, 1979

MATTER OF: Fiber Materials, Inc. - DL600042

DIGEST: *[Protest of Sole-Source Award Subsequent to RFQ Cancellation]*

1. Protest to GAO filed more than 10 working days after protester, upon receiving notice of cancellation of RFQ, protested to procuring agency and was advised at subsequent meeting that agency position was unchanged is untimely since result of meeting was initial adverse agency action under 4 C.F.R. § 20.2(a) (1979).

DL603223

Fiber Materials, Inc. (FMI), has protested the sole-source award of a contract to Avco Systems - Division (AVCO) by the Los Alamos Scientific Laboratory (LASL) following the cancellation of a competitive request for quotations (RFQ).

DL602034

CN601073

LASL is a Department of Energy (DOE) facility which is operated under a prime management contract by the University of California. While our Office does not normally review protests against the award of subcontracts, we have stated we would review such awards when they are "for" DOE by prime management contractors who operate and manage DOE facilities. Fiber Materials, Inc., 57 Comp. Gen. 527 (1978), 78-1 CPD 422.

The facts giving rise to the protest are that on December 8, 1978, LASL issued RFQ No. KS9-6899J for two fine weaved pierced fabric (FWPF) graphite billets to three firms. Following two amendments, which changed the density requirements from 1.98 gm/cc to 1.90 gm/cc and extended the due date, quotations from AVCO and FMI were timely received on January 22, 1979. AVCO quoted a total price of \$83,392 and FMI's quote was \$61,524.

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According to the report from DOE responsive to the protest, following receipt of these quotations, LASL became aware of problems with prior billets purchased from FMI. Because of this information, LASL reevaluated its minimum needs and by amendment to the RFQ dated February 27, 1979, reopened the RFQ with amended specifications. The new specifications required that the items to be supplied be radiographically flaw-free and that defective billets would be retained by LASL and replaced at no additional cost by the vendor.

Both AVCO and FMI resubmitted the same price quotations on the new due date of March 2, 1979, but FMI referred to a February 16, 1979, communication it had previously sent to LASL. In the February 16 and March 2 submissions, FMI argued that "flaw-free" was an incomprehensible and nondefinitive term and the billet replacement provision was inappropriate.

Upon review of the situation existing at this time, early March 1979, LASL determined that because of the continuing need for prompt delivery and FMI's objections to the revised specifications, the RFQ should be canceled and a sole-source award made to AVCO. On April 2, 1979, the RFQ was canceled for failing to state the agency's minimum needs. The revised needs were the tight delivery schedule which would only permit supplying billets already manufactured because of the 17-week manufacturing timeframe and the need for the items to be Air Force qualified. The justification for the noncompetitive procurement stated that AVCO, the only source of Air-Force qualified FWPF billets, had billets available which it was manufacturing for the Air Force under a separate contract and could supply these to LASL.

On April 3, 1979, FMI sent a communication to LASL objecting to the cancellation and requesting that FMI be permitted to submit a quotation. On April 4 and 5, 1979, FMI had telephone conversations with several persons at LASL in which the position of LASL was explained. On April 17 and 26, two purchase orders were issued to AVCO for the required billets.

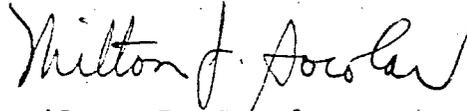
We do not find the issues to be so intertwined to require a review of the first two if, based on the facts, they were untimely filed. The Air Force qualification of AVCO and the 2-week delivery schedule were the requirements which precluded FMI from participating and not the origin of the billets which AVCO proposed to supply.

Even assuming that FMI had a reasonable basis in believing that the April 2, 1979, cancellation notice was not final, FMI's correspondence of April 3, 1979, with LASL in which it objected to the cancellation constituted a protest to LASL. When, following the April 5 conversation, no change was forthcoming in the LASL position, this was the initial adverse agency action on the protest. Section 20.2(a) of the Bid Protest Procedures requires protests be filed with our Office within 10 working days following notification of initial adverse agency action after a protest at the agency level. Since FMI's protest was not filed until over a month later, the first two issues are untimely and not for consideration.

FMI further submits that its protest should be considered under section 20.2(c) of our Procedures which permits consideration of untimely protests where issues significant to procurement practices are raised. This exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. R. A. Miller Industries Inc. (Reconsideration), B-187183, January 14, 1977, 77-1 CPD 32. We see nothing in the present case to warrant invoking the exception.

Regarding the allegation of collusive activity between LASL and AVCO which led to the Government paying more than required, as compared to FMI's low quotation, our review of the record has disclosed nothing improper other than FMI's bare allegations. The fact that AVCO may have utilized billets produced under the Air Force contract is a matter for consideration by the Air Force in administering that contract.

Accordingly, the protest is dismissed.

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

Milton J. Socolar
General Counsel