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DECISION



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

FILE: B-203508

DATE: June 22, 1981

MATTER OF: Engineering Computer Optecnomics, Inc.

DIGEST:

1. Protest against alleged solicitation improprieties which were apparent prior to closing date for receipt of initial proposals is untimely and will not be considered since it was filed after that date.
2. Subcontracting with large business under service contract set aside for small business is not legally objectionable.

Engineering Computer Optecnomics, Inc. (ECO) protests the award of a contract to Analytical Advisory Group, Inc. under request for proposals (RFP) N000123-81-R-0593, issued by the Department of the Navy. The RFP was a small business set-aside for the measurement of ship surface areas.

ECO contends that several provisions of the RFP were impermissibly vague. Since this basis of protest was untimely filed, we dismiss this portion of the protest. ECO also contends that Analytical should not be awarded a contract because it intends to subcontract over 50 percent of the requirement to a firm which may be a large business. We find this contention to be without merit and, therefore, deny the protest in part.

ECO, by letter of January 19, 1981, requested the Navy to clarify five specified provisions of the RFP. The Navy subsequently clarified each provision to the apparent satisfaction of ECO. On the basis of these clarifications, ECO prepared and submitted a proposal. The closing date for the receipt of initial proposals

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was February 17, 1981. On May 20 the Navy informed ECO of its intent to award a contract to Analytical. On June 2, ECO filed a protest with our Office.

ECO contends that the RFP provisions for which it requested and received clarification were impermissibly vague and that proposals prepared without benefit of clarification could not be fully responsive to the Government's needs. More specifically, ECO claims that the RFP provisions concerning accuracy requirements and the means by which the Government plans to check the work of the contractor lack the requisite specificity. ECO also questions the RFP reference to a "computer controlled platter" in the absence of a requirement to produce graphical plots of digitized compartments. The protester further contends that the RFP fails to identify certain enumerated items as individual surfaces, bulkheads or compartments, and also fails to specify whether those compartments that are to be digitized will be highlighted by the Government or by the contractor.

Our Bid Protest Procedures provide that protests based upon alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals must be filed with our Office before the closing date. 4 C.F.R. § 20.2(b)(1)(1980). As evidenced by ECO's January 19 request for clarification, the alleged vagueness of the RFP provisions was apparent prior to the closing date for initial proposals. Since ECO filed its protest more than three months after the February 17 closing date, the contention concerning the vagueness of the RFP is untimely and will not be considered. See Data Technology Industries, Inc., B-197858, July 1, 1980, 80-2 CPD 2.

ECO also alleges that Analytical intends to subcontract more than 50 percent of the requirement to a firm whose qualification as a small business has not been guaranteed in accordance with the requirements of the RFP. We do not believe, however, that the alleged subcontracting relationship with a large business is objectionable.

We have been informally advised that the RFP contained the following definition of a small business concern, which is a part of the standard "Notice of Total Small Business Set-Aside" clause set forth in Defense Acquisition Regulation § 7-2003.2 (1976 ed.):

"A 'small business concern' is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns. Provided, That this additional requirement does not apply in connection with construction or service contracts."
(Emphasis added.)

Since the RFP was for services, the "end item" limitation does not apply. In light of this exemption, large business firms may subcontract under a service contract which has been awarded under a small business set-aside. See Industrial Contractors, Inc., B-197745, June 20, 1980, 80-1 CPD 436. Thus, the allegation that Analytical would subcontract more than 50 percent of the requirement, even if substantiated, would not afford a basis upon which to question the procurement. Since it is apparent from the protest as submitted that this allegation lacks legal merit, this portion of the protest is summarily denied.

The protest is dismissed in part and denied in part.


Milton J. Acosta
Acting Comptroller General
of the United States