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DECISION



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

FILE: B-204594

DATE: December 24, 1981

MATTER OF: La Pointe Industries, Inc.

DIGEST:

1. Protest based upon pre-bid opening conversations with a component supplier, as the result of which protester suspected that a potential competitor may not use components which meet Government specifications, need not be filed before bids are opened and competitor is low bidder in line for award. Protest alleging under these circumstances that low bidder may use non-specification components, filed two days after bid opening, is timely.
2. Record provides no support for protester's contention that successful bidder may have obtained a price advantage by having components manufactured to its own drawings rather than drawings specified in the solicitation. To extent protester is suggesting that successful bidder may not comply with contract specifications, it raises question of contract administration not for consideration by GAO.
3. Protester's allegation that the recommended supplier of parts may not have offered to provide the parts to all prospective bidders at the same price is a private matter between the parties not for consideration by GAO.

La Pointe Industries, Inc. protests the proposed award of a contract to Telex Communications, Inc. under invitation for bids No. DAAB07-81-B-0174 issued by the U.S. Army Communication - Electronics Command, Fort Monmouth, New Jersey, for 25,500 whip antennas for use on military vehicles. Telex is currently performing another Army contract for the identical item.

La Pointe's protest was filed with our Office two days after bid opening; Telex was the low bidder and La Pointe was second low out of five firms. La Pointe advises that during the preparation of its bid, it held a series of conversations with representatives of Oak Switch Systems, Inc., the Army's recommended source for certain antenna parts. As a result, it suspected that during the performance of its current contract Telex had been obtaining antenna components from Oak manufactured in accordance with Telex's own drawings rather than the Army's drawings. La Pointe argues that it would suffer a competitive disadvantage if the cost of these components, as made to Telex's own drawings, is less than the cost Oak quoted to La Pointe for components manufactured in accordance with the Army's drawings.

The Army contends that because La Pointe first became aware of the basis of its protest during conversations with Oak's representatives, which apparently took place more than ten working days before the protest was filed, the protest should be dismissed as untimely. 4 C.F.R. § 21.2(b)(2) (1981). We do not agree. When those conversations occurred, bids had not been received and it was not known whether Telex's bid would be in line for award or, for that matter, whether Telex would bid. Our protest procedures are reserved for considering whether an award or proposed award of a contract is proper. Koolshade Corporation, B-197897, September 2, 1980, 80-2 CPD 164. Because the agency had not taken or proposed any action adverse to the interests of La Pointe at the time of these conversations, we would have viewed a protest as premature and would not have considered the matter. See Clifford Industries, Inc., B-191075, February 8, 1978, 78-1 CPD 107.

Alternatively, the Army characterizes La Pointe's protest as a challenge to the propriety of the IFB specifications, which must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1). La Pointe has not questioned the propriety of the specifications, and therefore did not need to file its protest prior to bid opening. Consequently, La Pointe's protest is timely.

As we have indicated above, La Pointe does not contend that there is any defect in the Army's specifications, nor does it maintain that Telex's bid takes exception to those specifications. Rather, La Pointe expresses a suspicion

that in performing its current contract Telex has been using Oak components similar to those required by the Army's specifications but made to Telex's own specifications at less cost. La Pointe's initial argument is that it would be unfair for it to compete for this contract on the basis of using Oak components which fully comply with the Army's specifications if Telex is permitted to compete using less expensive Oak components made to Telex's specifications. We deny the protest, as to this issue for the reasons stated below.

The Army's report discloses that although Telex does in fact utilize its own drawing sheets, the sheets simply reference the appropriate Army drawings identified in the specifications. Telex's purchase orders to Oak for these components under its current contract require the components to be made to the Army drawings. In addition, Oak has executed certificates of compliance for each parts shipment indicating that the materials it furnishes comply with the specifications listed in Telex's purchase orders. Finally, the Defense Contract Administration Services Management Area, Cedar Rapids, has verified that the Oak components were manufactured to the Army specifications and that the Telex antennas furnished under the current contract have successfully passed acceptance testing. Consequently, there is nothing in the record to support La Pointe's speculation that Telex's low bid may be premised upon the use of non-conforming components.

La Pointe's protest also may be read as predicting that if awarded the contract, Telex would supply antennas which would not comply with the specifications. This is a matter of contract administration which we will not review. Industrial Maintenance Services, Inc., B-195216, June 29, 1979, 75-1 CPD 476.

After receiving the Army report, La Pointe made the new contention that if Oak does manufacture the parts for Telex in accordance with the Army drawings, Oak should be compelled to supply those parts to La Pointe at the same price to preclude giving Telex a competitive advantage.

It is questionable whether this contention meets our timeliness rules, since the initial protest appears to concern possible cost differences resulting from the use of drawings which differ from those specified by the Army. Nevertheless, even if we give the protester the benefit of the doubt and consider the issue, we see no basis to question the Army's actions.

We are not aware of any legal requirement, and none has been cited, for component suppliers to offer uniform terms to all potential bidders upon Federal contracts. In this regard, Oak was simply a recommended source for the components. Bidders were free, however, to bid upon the basis of furnishing equal components manufactured by other suppliers. Under fixed price, formally advertised contracts of this type, the Federal Government has no role in setting the price of subcontracts; rather, the matter is left to the parties involved to determine through normal commercial practices. Consequently, we dismiss this aspect of the protest.

The protest is denied in part and dismissed in part.

Harry D. Van Cleave

For the Comptroller General
of the United States