

**DECISION**

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

**FILE:** B-219116 **DATE:** August 26, 1985  
**MATTER OF:** Radionic Hi-Tech, Inc.

**DIGEST:**

1. Protester is not an interested party to protest conflicting prices for items in prospective awardee's original and duplicate bids where protester did not bid for those items.
2. Failure to complete an invitation's Place of Performance clause properly is a matter of bidder responsibility, not bid responsiveness, and thus does not automatically render the firm ineligible for award.
3. Allegation that Trade Agreements Act prohibits award to bidder which indicated foreign source for item with estimated use in excess of \$156,000 will not be considered where agency states that bidder will not receive award for that item.
4. Where protester raises new grounds of protest in its comments to the agency report and the grounds were known or should have been known more than 10 days prior to the submission of the comments, the new grounds of protest are untimely and will not be considered.
5. Where agency specifically rebuts issues raised in the initial protest and protester fails to comment on the agency's rebuttal in its comments to the agency report, the issues are deemed abandoned.

Radionic Hi-Tech, Inc. (Radionic), protests the award of any contract under solicitation No. 7PF-52602/B4/7SB issued by the General Services Administration (GSA) for the purchase of electric lamps, fluorescent adapters and photo-flash lamps. Radionic alleges that the bids submitted by other firms contain several deficiencies. We deny the protest in part and dismiss it in part.

GSA issued this solicitation on March 22, 1985, for the supply of approximately 460 items. Bids were opened on May 1, and 32 bids were received. Radionic bid on 40 items and, according to the agency's initial bid evaluation, Radionic was the low bidder on one item and was tied as low bidder on another item. No award has been made.

Radionic contends that Wonderlite Company's (Wonderlite) bid (low on several items) is unacceptable since Wonderlite's original and duplicate bids contained different prices for some of the same items and thus were ambiguous; the bid failed to list the owners (other than the bidder) of the manufacturing facilities in the Place of Performance clause, and a Korean source was indicated for items the prices for which exceeded the \$156,000 limit on purchases of foreign end products under the Trade Agreements Act of 1979, 19 U.S.C. § 2501 (1982).<sup>1/</sup> These allegations are without merit.

Radionic did not bid on, and thus was not in line for award of, any but one of the items on which it claims Wonderlite submitted inconsistent bids. Radionic thus is an interested party only for purposes of protesting this one item (item 158). See Gem Services, Inc., B-217038.8, Feb. 7, 1985, 85-1 C.P.D. ¶ 159. Moreover, the record shows that, in fact, there was no price discrepancy in Wonderlite's bid on this one item. Finally, GSA states that it considers Wonderlite ineligible for award of any items for which Wonderlite offered different prices in its original and duplicate bids.

As for Radionic's argument concerning the Place of Performance clause, Wonderlite was not required to list plant owners other than itself since, as it indicated in the space provided in the clause, it did not intend to perform at plants or facilities located at an address different from its own. Although it may be, as Radionic further argues, that Wonderlite's response to this clause made it unclear whether the manufacture of the items would take place in Korea or at Wonderlite's own facility, the failure to provide proper information in a Place of Performance clause is a matter of bidder responsibility, not bid responsiveness.

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<sup>1/</sup> The limit actually is \$161,000 according to the Federal Acquisition Regulation, § 25.402 (1984).

This alleged deficiency thus would not have rendered Wonderlite automatically ineligible for award. Jersey Maid Distributors, Inc., B-217307, Mar. 13, 1985, 85-1 C.P.D. ¶ 307.

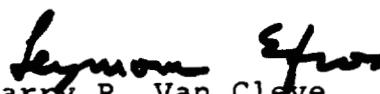
Finally, GSA states that no award will be made to Wonderlite for items whose requirements are expected to exceed the statutory limit and which Wonderlite indicated it intends to supply from a Korean source.

Radionic raised numerous additional arguments in its initial protest concerning other alleged bid improprieties. GSA responded in full to each of these additional grounds, however, and Radionic did not rebut those portions of GSA's report. Under these circumstances, we consider Radionic to have abandoned these additional grounds of protest.

In its comments on the agency's report, Radionic argues for the first time that Wonderlite's bid was based on orders consisting of higher quantities than contemplated by the solicitation and that, as a result, Wonderlite enjoyed a price advantage over other bidders.

Protest arguments not raised in a protester's initial submission must independently satisfy the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. part 21 (1985). Where the protester supplements its original timely protest with a new ground of protest in its response to the agency report more than 10 days after the basis for the new argument should have been known, the new ground is untimely. See TRS Design & Consulting Services--Reconsideration, B-214011.2, July 10, 1984, 84-2 C.P.D. ¶ 34. As the argument raised by Radionic in its comments concerns a matter apparent on the face of Wonderlite's bid, Radionic should have been aware of it at least as of the time it noticed the other alleged bid defects. We received Radionic's comments on August 5, almost 2 months after it filed its other protest grounds. Clearly, these new arguments therefore are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.

*for*   
Harry R. Van Cleve  
General Counsel