

Lilly - 47-2



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Steridoc Corporation
File: B-225752
Date: April 29, 1987

DIGEST

1. A protester complaining that an agency improperly awarded a contract to awardee whose technology was of dubious value is not an interested party for purposes of maintaining a protest at the General Accounting Office where protester was not an offeror under the solicitation.
2. Protest that was not filed within 10 working days after basis of protest was known or should have been known is dismissed as untimely.
3. Protester has not satisfied burden of demonstrating that rejection of proposal was improper where protester does not respond to specific deficiencies cited by agency as justifying rejection. Mere disagreement with evaluation does not satisfy burden.

DECISION

Steridoc Corporation protests the award of a contract to GMS Engineering Corporation under request for proposals (RFP) No. DAMD17-85-R-0016, issued by the United States Army Medical Research Acquisition Activity (Army), Fort Detrick, Frederick, Maryland, for development of a noninvasive NBC warfare patient vital signs monitor. Steridoc also objects to rejection of its proposal under the Army Medical Research and Development Command's Broad Agency Announcement soliciting proposals for basic research.

We dismiss the protest in part and deny it in part.

Initially, the Army argues that the protest should be dismissed because Steridoc failed to provide a copy of the protest to the contracting officer within 1 working day after the protest was filed with our Office, as required by our Bid Protest Regulations at 4 C.F.R. § 21.1(f).

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While the protest was filed in our Office on February 19, 1987, the Army states that it did not receive a copy of the protest until February 24, 1987, 3 working days later. We note, however, that the Army received telephonic notice of the protest the day it was filed in our Office, filed its administrative report on the protest 3 working days before the date it was due, and did not formally refer to the protester's failure to meet the 1-day requirement until it filed its administrative report. Since the delay in the agency's receipt of its copy was only 2 days and did not result in a delay of the protest proceedings, Steridoc's failure to furnish a copy of the protest to the procuring activity within 1 working day after filing in our Office does not require dismissal of the protest. Triple P Services, Inc., B-220437.3, Apr. 3, 1986, 86-1 C.P.D. ¶ 318.

Protest Under Request for Proposals

Steridoc first contends that the Army awarded a contract to GMS for a technology of dubious value, limited in scope, and too expensive to be used as a tool.

Our Bid Protest Regulations require that a party be "interested" before it will be permitted to maintain a protest with this Office. See 4 C.F.R. § 21.1(a) (1986). "Interested party" is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Id. § 21.0(a). The Army reports that Steridoc was not an offeror under the RFP. Since Steridoc was not an offeror, it is not entitled to interested party status and its protest on this basis is dismissed. See Automatics Limited, B-223978, Aug. 20, 1986, 86-2 C.P.D. ¶ 205.

Steridoc also protests that the Army improperly gave certain information contained in Steridoc's contract under the Small Business Innovation Research (SBIR) program to GMS. Steridoc alleges that GMS's scope of work as defined in its contract schedule "bears a not too subtle parallel" to Steridoc's SBIR work. According to Steridoc, the chronology of events shows a striking interweave of documentation submissions from January 31, 1984, through October 15, 1985, of the Army's receipt of Steridoc's SBIR contract reports and of the proposals, negotiation and award of a contract to GMS.

We dismiss this basis of protest as untimely under our Bid Protest Regulations which require that protests be filed within 10 working days after the basis of protest is known

or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). Here, Steridoc knew or should have known its protest basis by November 14, 1985, when the Army published notice of the award to GMS in the Commerce Business Daily (CBD). Publication in the CBD is constructive notice of the procurement action publicized. Cullinet Software, Inc., B-216442, Jan. 23, 1985, 85-1 C.P.D. ¶ 89. Since Steridoc did not file its protest with our Office until February 19, 1987, this aspect of its protest will not be considered on the merits.

Protest Under Broad Agency Announcement

Steridoc also objects to the Army's rejection of its proposal submitted in response to the Army's August 1986 Broad Agency Announcement (BAA) for basic research in areas of interest to the United States Army Medical Research & Development Command. Steridoc complains that it never received proper notification of its rejection.

The BAA listed a number of research topics for which proposals could be submitted. Offerors were advised that their submission would be judged according to the following factors, which were not necessarily of equal weight and could vary, depending upon the proposal under consideration: military and program relevance, research objective, scientific feasibility, qualifications, facilities, care and safety, and budget. The BAA cautioned that the final stage of the evaluation was the establishment of an order of merit in which all competing proposals would be ranked on the basis of their respective military relevance and scientific merit evaluations. Awards would depend upon the availability of funds and the priority which the Army determined to exist at the time of award.

By letter dated February 5, 1987, the Army notified Steridoc that its proposal was not of sufficient medical priority within the Army to be supported. A scientific review of Steridoc's proposal had categorized it as one of low priority. The Army reports that it had a requirement for a monitor which would determine such vital signs as blood pressure, heart rate, respiration and tidal volume, through protective clothing. However, Steridoc's proposed instrument only provided blood pressure information through a shirt. The Army noted that Steridoc's instrument would use lithium, rechargeable batteries which would explode if not properly charged and whose number of recharges was limited. Furthermore, according to the Army, the oscilometric technique proposed by Steridoc had been used for several years by commercial suppliers of electronic vital signs monitors, and there were instruments on the commercial market that would do what was proposed and more.

Steridoc comments that lithium batteries are safe and can stand up to 100 or more recharges. Steridoc also argues that instruments on the commercial market use its patent under license, and that its technology is one of only five blood pressure devices listed with the Food and Drug Administration.

It is not the function of our Office to independently evaluate the technical adequacy of proposals. Rather, the overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in the evaluation of proposals. See Westinghouse Electric Corp., B-215554, Sept. 26, 1985, 85-2 C.P.D. ¶ 341. Therefore, such a determination will not be disturbed by our Office absent a clear showing that the determination was unreasonable, an abuse of discretion, or involves a violation of the procurement statutes or regulations. Progressive Learning Systems, B-218483, July 25, 1985, 85-2 C.P.D. ¶ 72. Steridoc, as the protester, has the burden of affirmatively proving its case, and its unsupported technical disagreement with the evaluation of its proposal does not satisfy the requirement. International Imaging Systems, B-224401, Sept. 15, 1986, 86-2 C.P.D. ¶ 302.

Steridoc has failed to rebut some of the Army's technical reasons for rejecting its proposal; e.g., the inability of the monitor to determine blood pressure through protective clothing. Accordingly, we find no merit to this portion of the protest. Heuristic Developments, Inc., B-221292, Apr. 7, 1986, 86-1 C.P.D. ¶ 338.

The protest is dismissed in part and denied in part.

for 
Harry R. Van Cleve
General Counsel