

C. Melody



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Petchem Inc.
File: B-228093
Date: September 8, 1987

DIGEST

1. Contention that contracting agency improperly will withdraw small business set-aside is premature and will not be considered where there is no evidence supporting contention other than protester's speculation that agency plans to do so.
2. General Accounting Office (GAO) generally will not consider contention that specification should be made more restrictive since GAO's role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications.

DECISION

Petchem, Inc. protests any award under request for proposals (RFP) No. N68836-87-R-0852, issued by the Navy for tug and towing services for military shipping at Port Canaveral, Florida. We dismiss the protest.

The RFP, issued as a small business set-aside, calls for award of a requirements contract for tug and towing services at Port Canaveral for 1 year. In relevant part, the RFP provides for 24-hours notice to the contractor of delivery orders for the tug and towing services, and gives the contractor a right of first refusal for any delivery orders placed with less than 24-hours notice. If the contractor declines to accept the delivery order, the Navy reserves the right to obtain the services from another source. The solicitation also requires that the tugs be equipped with special fenders needed to handle nuclear submarines.

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Petchem, the incumbent under the prior contract for the services, maintains that the Navy would prefer to award a contract to a large business, Port Canaveral Towing, Inc. (PCT), which holds the exclusive franchise for tug services for commercial shipping at Port Canaveral, rather than make award to a small business under the RFP. In support of this contention, Petchem argues that the specifications in the RFP were designed to inhibit competition by small businesses, and thereby justify withdrawing the small business set-aside and ultimately allow award to be made to PCT. Specifically, Petcham argues that, while, as the incumbent, it has equipped its tugs with the special fenders called for by the RFP, few other potential small business offerors have the required fenders or would be willing to incur the cost of installing them in anticipation of award under the RFP.

In addition, with regard to the provision for delivery orders on less than 24-hours notice, Petchem states that its prior contract called for constant manning of the tugs and only 4-hours notice of delivery orders. Under the current RFP, however, the Navy decided to use a requirements contract format--adopting a 24-hour notice provision and no longer requiring constant manning of the tugs--in an effort to achieve cost savings. Petchem argues that it is unlikely that the small business contractor under the RFP will accept delivery orders with less than 24-hours notice, which constituted 44 percent of the orders under its prior contract, thus allowing the Navy to acquire a substantial portion of the services outside the contract awarded under the RFP, pursuant to a backup contract with PCT.

To the extent that Petchem contends that the Navy improperly plans to withdraw the small business set-aside, the protest is premature since there is no evidence to support Petchem's contention other than its speculation that the Navy's plans to do so. See Sony Corp. of America, B-224373.2, Mar. 10, 1987, 87-1 CPD ¶ 267. Further, to the extent that Petchem argues that the provision will result in delivery orders with less than 24-hours notice being placed under a backup contract instead of with the small business contractor under the RFP, we see no legal basis on which to object to the provision. As discussed above, the small business contractor under the RFP is not prevented from accepting orders with less than 24-hours notice; on the contrary, the RFP specifically gives the contractor the right of first refusal for the orders. In addition, to the extent that Petchem argues that it would not be feasible for the contractor to accept the orders with less than 24-hours notice since it will not be compensated under the RFP for constant manning of the tugs, the offerors are free to take into account the costs involved in being prepared to accept such orders in formulating the prices they propose under the RFP.

Although Petchem also argues that the provision for 24-hours notice of delivery orders will not meet the Navy's needs and that the Navy instead should require constant manning of the tugs as under Petchem's prior contract, Petchem has not shown that the current provision adversely affects its ability to compete under the RFP. On the contrary, Petchem in essence is arguing that the specification should be made more restrictive, a contention that we generally will not consider, since our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications. See Olson and Associates Engineering, Inc., B-215742, July 30, 1984, 84-2 CPD ¶ 129.

Finally, Petchem maintains that the contracting officer has refused to disclose to the potential offerors certain unspecified information which is necessary to interpret properly the wage determination in the RFP. Since Petchem, as the incumbent, is on notice of the undisclosed information, it is not prejudiced by the alleged nondisclosure.

The protest is dismissed.


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