



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EG&G International, Inc.

File: B-233108

Date: October 27, 1988

DIGEST

1. Protest that firm should have been awarded contract because its price for basic requirement was low is dismissed where, in accordance with solicitation terms, the Navy made award on basis of total price including options.
2. Allegation that contract should not be awarded to a foreign firm due to national security factors is not a valid basis for protest where such an award does not violate any law or regulation.
3. Claims of possible patent infringement do not provide a basis for the General Accounting Office (GAO) to object to an award. Questions of patent infringement generally are not encompassed by GAO's bid protest function, since patent holders have recourse for claims of patent infringement under 28 U.S.C. § 1498 (1982).

DECISION

EG&G International, Inc. protests the Department of the Navy's award of a contract for side scan sonars with tracking systems to an English Company, Dowty Maritime Systems Ltd., under request for proposals (RFP) No. N00164-R-0441. EG&G argues that its offer was most advantageous to the government and points out that its price for the basic requirement under the contract was lower than Dowty's, while its total price, including all options, was only .4 percent higher than Dowty's. EG&G also argues that this RFP should have been restricted to United States sources because of its sensitive national defense nature. Finally, EG&G asserts that Dowty will not be able to comply with the contract specifications without infringing on EG&G's patents.

We dismiss the protest.

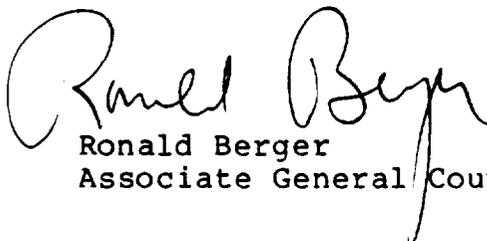
043674/137172

EG&G first contends it should have received the award because its price for the basic contract requirement was low and that its approach was more advantageous to the government. The protest submissions show that the RFP, which was issued on April 29, 1988, stated that a single award would be made to the responsive offeror whose total offer on all items is most advantageous to the government and provided further that the total offer is defined as the total price for all options added to the total price for the basic requirement. Based on the total price for the basic and option requirements, the Navy determined that Dowty's offer was low by more than \$23,000. Since the contracting officer was required to evaluate offers in accordance with the RFP, the determination of low offeror based on option prices as well as the basic price was proper. Accordingly, there is no merit to EG&G's contention that it was low and therefore should have received the award.

EG&G's argument that an award should have been made to a domestic firm due to national security factors is not for consideration under our Bid Protest Regulations. Detroit Broach and Machine--Reconsideration, B-213643.2, July 12, 1984, 84-2 CPD ¶ 43. Our review of bid protests is to determine whether procuring agencies adhere to the policies and procedures prescribed by existing laws and regulations. Id. The protester has not alleged that award to Dowty violates any existing law or regulation.

Finally, we note that claims of possible patent infringement do not provide a basis for us to object to an award. We previously have recognized that 28 U.S.C. § 1498 (1982) gives patent holders an adequate and effective remedy for patent infringement, while saving the government from having its procurements delayed pending litigation of patent disputes. Fairchild Weston Systems, Inc., B-228568.2, Apr. 22, 1988, 88-1 CPD ¶ 394. Thus, generally, questions of patent infringement are not encompassed by our bid protest function. Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583.

The protest does not state a valid basis for protest. Therefore, pursuant to 4 C.F.R. § 21.3(m) (1988), it is dismissed.


Ronald Berger
Associate General Counsel