



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dantec Electronics, Inc.

File: B-243580.2

Date: November 12, 1991

Rima Notarfrancesco for the protester.

Michael J. Houser for Aerometrics, Inc., an interested party.

Lt. Colonel William H. Spindle, Department of the Air Force, for the agency.

Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest issue filed 7 weeks after award challenging responsiveness of awardee's bid based on information obtained in agency report in response to other protest issue is dismissed as untimely because protester failed to diligently pursue information.

DECISION

Dantec Electronics, Inc. protests the award of a contract to Aerometrics, Inc. under invitation for bids (IFB) No. F04611-91-B-0011, issued by the Department of the Air Force for a phase doppler particle analyzer (PDPA) system. Dantec essentially argues that Aerometrics' bid should have been rejected as nonresponsive because Aerometrics did not provide descriptive literature corresponding to the PDPA system for which it submitted a bid.

We dismiss the protest.

The amended solicitation, issued on March 14, 1991, required a firm's PDPA system, consisting of an optical transmitter and receiver, a signal processor, and a computer system with software to acquire and analyze data, to be compatible for use with an existing test article chamber and interfacing laser equipment, both described in the solicitation. The solicitation further required that a firm's PDPA system be able to measure, within specified degrees of accuracy, the size and velocity of droplets under various experimental conditions as described in the solicitation. The solicitation specifically required a firm to submit with its bid experimental data and descriptive literature sufficient for the agency to evaluate the acceptability of a firm's

PDPA system, including verification of the system's performance and accuracy. The solicitation incorporated Federal Acquisition Regulation (FAR) § 52.214-21, the standard descriptive literature clause, which generally described the type of literature required to be submitted with a firm's bid and stated that the failure of the descriptive literature to show that a firm's product conformed to the requirements of the solicitation would result in rejection of the bid.

Two firms--Dantec and Aerometrics, Inc.--submitted bids by the amended bid opening date of March 22. While Dantec was the apparent low bidder (\$106,000), the agency, on April 4, rejected its bid as nonresponsive because the agency was unable to determine, based strictly on Dantec's listing of scientific references without submitting copies of the actual scientific studies or any experimental data, that its PDPA system was acceptable and conformed to the performance and accuracy specifications as described in the solicitation. On April 8, after evaluating Aerometrics' experimental data and descriptive literature and determining that its PDPA system was acceptable as it conformed to the solicitation's performance and accuracy specifications, the agency awarded a contract to Aerometrics, the low, responsive and responsible bidder (\$112,625).

Dantec initially filed a protest with our Office on April 12, arguing that the solicitation was ambiguous with respect to the type and amount of experimental data which a firm was expected to submit for purposes of the agency's evaluation of the acceptability of a firm's PDPA system. Dantec believed it submitted experimental data and descriptive literature sufficient for the agency to verify the acceptability of its PDPA system, and it therefore argued that its bid was improperly rejected as nonresponsive.

While the agency responded to both of Dantec's arguments concerning the responsiveness of its bid in detail in its agency report, received by Dantec on May 16, Dantec, in its comments to the agency report, filed with our Office on May 30, did not rebut any of the agency's responses to either of the issues it raised. Therefore, we deemed these issues to have been abandoned, and accordingly, we dismissed its protest. Dantec Elecs., Inc., B-243580, July 17, 1991, 91-2 CPD ¶ 68.

However, in its comments to the agency report, Dantec challenged the responsiveness of Aerometrics' bid. Dantec argued: (1) that Aerometrics did not provide descriptive literature corresponding to the PDPA system for which it submitted a bid, instead providing descriptive literature for an earlier developed PDPA system; (2) that Aerometrics

took exception to the solicitation's performance and accuracy specification concerning the measurement of the size and velocity of droplets under various experimental conditions as described in the solicitation; (3) that Aerometrics did not provide descriptive literature concerning certain mathematical calculations; and (4) that Aerometrics did not bid on a complete PDPA system. Since only Dantec and Aerometrics submitted bids in response to the solicitation, we found Dantec to be an interested party to challenge the responsiveness of Aerometrics' bid because the appropriate remedy if its protest were sustained would be resolicitation under which Dantec could compete. See generally Remtech, Inc., B-240402.5, Jan. 4, 1991, 91-1 CPD ¶ 35. Therefore, we considered Dantec's comments as a new protest and requested a supplemental report from the agency addressing Dantec's allegations concerning the responsiveness of Aerometrics' bid.

Under our Bid Protest Regulations, a protest must be filed within 10 working days of the time the basis of the protest is known or should have been known, 4 C.F.R. § 21.2(a)(2) (1991). Where a protester initially files a timely protest and later supplements it with additional arguments in its comments to the agency report, the later raised arguments must independently satisfy the timeliness requirements of our Regulations. San Antonio Floor Finishers, Inc., B-241386, Feb. 4, 1991, 91-1 CPD ¶ 112. In this regard, our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues; rather, a protester must diligently pursue the information forming its additional grounds of protest. Id.; Dictaphone Corp., B-235818, Oct. 3, 1989, 89-2 CPD ¶ 288.

Here, when Dantec filed its initial protest on April 12, challenging the rejection of its bid as nonresponsive, it was aware that on April 8, the agency had awarded a contract to Aerometrics, the firm determined to be the low, responsive and responsible bidder and the only other firm, in addition to Dantec, whose bid was publicly opened on March 22. Other than filing its initial protest concerning its own responsiveness and waiting to receive, as it did on May 16, the agency report in response to its protest, which included a copy of Aerometrics' bid and descriptive literature, Dantec did not seek any information concerning the responsiveness of Aerometrics' bid. We find Dantec's supplemental argument concerning the responsiveness of Aerometrics' bid, which it raised in its comments to the

agency report filed on May 30--7 weeks after award and its initial protest--is untimely because Dantec did not diligently pursue its protest.¹

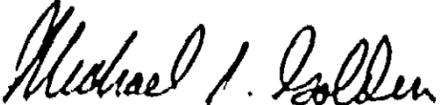
In any event, in its supplemental report, the agency responded in detail to each of Dantec's arguments concerning the responsiveness of Aerometrics' bid. In its comments to the agency report, Dantec did not rebut the agency's responses to three of its four allegations, specifically those concerning Aerometrics' failure to comply with the solicitation's performance and accuracy specification for the measurement of droplet size and velocity, Aerometrics' failure to provide descriptive literature concerning certain mathematical calculations, and Aerometrics' failure to bid on a complete system. Therefore, we deem these issues to have been abandoned and we will not further address them. See All Am. Moving and Storage, B-243630; B-243804, July 8, 1991, 91-2 CPD ¶ 32; Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520; The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

Further, with respect to Dantec's allegation that Aerometrics' bid should have been rejected as nonresponsive because Aerometrics did not provide descriptive literature corresponding to the PDPA system for which it submitted a bid, but instead provided descriptive literature for an earlier developed PDPA system, the agency states that Aerometrics' descriptive literature was relevant and discussed the PDPA system required by the specifications and for which Aerometrics submitted a bid. Aerometrics' bid and descriptive literature show that the PDPA system offered by Aerometrics contained all of the components--an optical transmitter and receiver, a signal processor, and a computer system with software to gather and analyze data--as required by the solicitation specifications. Moreover, the agency's technical consultants concluded that Aerometrics' PDPA system satisfied the solicitation's technical specifications. While Dantec continues to assert that Aerometrics' descriptive literature describes an earlier developed PDPA system than the one it now intends to furnish, it has not pointed to anything in Aerometrics' bid which establishes its case. Therefore, we have no basis to question either the agency's determination that Aerometrics submitted a responsive bid for an item conforming to the

¹Although we opened Dantec's supplemental argument raised in its comments to the initial agency report as a new protest and requested a supplemental report from the agency, the agency raised the timeliness issue in its supplemental report and under our Regulations, we are not precluded at this time from dismissing Dantec's supplemental argument as untimely. 4 C.F.R. § 21.3(m) (1991).

solicitation specifications or the agency's decision to award a contract to Aerometrics, the low, responsive and responsible bidder.²

Accordingly, the protest is dismissed.


Michael R. Golden
Assistant General Counsel

²To the extent Dantec believes that Aerometrics will not deliver an item conforming to the specifications, Aerometrics' performance involves a matter of contract administration which our Office does not consider. 4 C.F.R. § 21.3(m)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).