



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Amray, Inc.
File: B-246325
Date: February 27, 1992

Gerald T. Cameron, Jr., President, Amray, Inc. for the protester.
Peter A. Genovese, Manager, Sales Support Department, JEOL, USA, Inc., an interested party.
Darleen A. Druyun for the agency.
Mary W. Reich, Esq. and Robert G. Crystal, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The contracting agency is not required to order suspension of contract performance where protest is filed with GAO within 10 working days of protester being notified of award, but agency receives notice more than 10 calendar days after award.
2. GAO will not disturb an award where the record shows that the agency had a reasonable basis for determining that the item being procured met the technical specifications.

DECISION

Amray, Inc. (Amray), protests the award of delivery order No. CC-63221B to JEOL USA, Inc. (JEOL), for the purchase of a scanning electron microscope and a video printer. The order was issued by the National Aeronautics and Space Administration's (NASA) John F. Kennedy Space Center for procurement of the microscope under a General Services Administration (GSA) Federal Supply Schedule. Amray protests the award to JEOL on the bases that the JEOL microscope does not meet the required specifications and that an additional item was added to the procurement after the request for quotations (RFQ) was issued.

We deny the protest.

Kennedy Space Center issued an RFQ for a scanning electron microscope and a video printer to Amray and JEOL, the only two vendors listed on the GSA Federal Supply Schedule who

carried scanning electron microscopes.¹ Both firms responded with quotations for the required items, and JEOL's quotation was the lower of the two.

Amray first asserts that NASA should suspend contract performance because Amray filed its protest within 10 days of the date of the contract award. Apparently, Amray is confusing the time limit for filing a protest with the time limit for suspending contract performance. Amray filed its protest in a timely manner--not later than 10 working days after learning the basis of the protest. 4 C.F.R. § 21.2(a)(2) (1991). However, a different time limit applies in determining whether to suspend contract performance. Under the Competition in Contracting Act of 1984 (CICA), a federal agency is to suspend contract performance if it receives notice of a protest from GAO within 10 calendar days of the date of the contract award. 31 U.S.C. § 3553(d)(1) (1988); 4 C.F.R. § 21.4(b) (1991). See also BDM Management Services Company, B-228287, Feb. 1, 1988, 88-1 CPD 93 at 7.

In this case, the contract was awarded (i.e. the delivery order was issued) on October 7, 1991, and the agency received notice of the protest from GAO on October 21, 1991, more than 10 calendar days later. (GAO followed the requirement of CICA that it notify the agency of the protest within 1 working day of the receipt of the protest. 31 U.S.C. § 3553(b)(1).)

Amray next asserts that JEOL's product (the JSM-6100 scanning electron microscope) fails to meet one of the agency's required specifications--a specimen stage capable of holding a 6-inch diameter specimen and displaying the entire area at any angle and magnification. Amray says that the capability of the JSM-6100 is "less than 2 inches [40 millimeters] in X motion and 4 inches [75 millimeters] in Y motion," and that "[o]nly at very high tilt and by using X motion, Y motion, rotation and Z motion would it be even feasible that a 2 inch by 4 inch stage may be able to display the entire area of a 6 inch diameter specimen."

The agency submits that Amray has failed to consider certain features of the JSM-6100 that enable it to view an entire 6-inch specimen as required. NASA explains that the center of the beam of the microscope is offset from the center of the stage by 25 millimeters and the stage is capable of moving 40 millimeters (20 millimeters from the center of the stage in either direction) along the X axis and 100 millimeters

¹NASA is required to use the Federal Supply Schedule in purchasing this type of equipment.

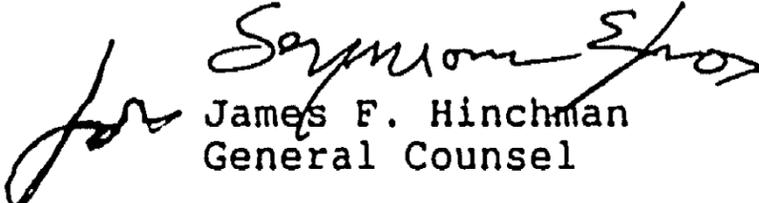
(50 in either direction) along the Y axis. This combination of motions, with the offset, enables the beam to view any point falling within a maximum radius of 77.62 millimeters (3.056 inches). NASA goes on to explain that by rotating the stage, which is capable of rotating 360 degrees, a specimen with a diameter of up to 6.112 inches (2 X 3.056 inches) can be viewed.

We have no reason to question the agency's position. Amray appears to have considered only the distance the stage of the JSM-6100 is capable of moving along the X and Y axes, and none of the other features the agency points out. When the other features are taken into account, the JSM-6100 was determined to be capable of performing as required.

The evaluation of technical aspects of a proposal is primarily the responsibility of the contracting agency. Our Office does not make an independent evaluation of their merits. Rather we examine the agency's evaluation to assure that it is reasonable and consistent with applicable evaluation criteria, statutes, and regulations. The protester bears the burden of showing that the evaluation is unreasonable, and the fact that it disagrees with the agency does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450; GTE Government Systems Corporation, B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276 at 5. Amray has failed to meet its burden.

Amray's last argument deals with the inclusion of a large specimen exchange airlock in this procurement. Amray contends that because the airlock was not included in the original RFQ, Amray was unaware of NASA's interest in that item and procurement of it without Amray's knowledge was improper. The record indicates that JEOL included the large specimen exchange in its quotation in response to item 10(b) of the specifications, which required the microscope to be capable of maintaining a "column vacuum . . . during specimen exchange." The large specimen exchange airlock, according to information in the record, enables the JSM-6100 to perform the function called for in item 10(b) for specimens up to 6 inches in diameter. Since the large airlock was thus a necessary part of the microscope and JEOL's quotation for the microscope, including the airlock, was lower than Amray's, the award was properly made to JEOL.

The protest is denied.


James F. Hinchman
General Counsel