



Comptroller General
of the United States
Washington, D.C. 20548

923166

Decision

Matter of: The Gilman Corporation
File: B-256754.2
Date: June 16, 1994

DECISION

The Gilman Corporation protests the terms of request for proposals (RFP) No. DLA451-93-R-0650, issued by the Defense Logistics Agency (DLA) for marine fenders. Gilman argues that its provisions are "restrictive and not competitive."

We dismiss the protest.

DLA, through the Defense General Supply Center (DGSC), is the procuring agency for these marine fenders, which are to be supplied to the Navy. The RFP, issued on March 16, 1993, described the fenders by their National Stock Number (NSN), as well as by the original equipment manufacture (OEM) part numbers of three manufacturers. The RFP contained DLA's "products offered" clause, which permits firms to offer alternate products not made by an OEM, as well as DLA's "identification of sources of supply" clause, which requires the apparent successful offeror to identify the source of supply of the items offered. Gilman responded to the RFP by offering an alternate product, and the firm's offer was forwarded to the Navy for evaluation, but the Navy did not expeditiously evaluate that offer. In view of the diminished quantities of fender in stock, on March 15, 1994, DGSC awarded the contract to Seaward International, one of the three manufacturers listed in the RFP, which offered its own part number.

Gilman subsequently filed a protest in our Office against the award to Seaward, arguing that it offered an equivalent item at a lower price and gave the agency ample time to evaluate its offer, and that the agency improperly disregarded that offer. In response to the protest, DGSC took steps to expedite the Navy's evaluation of the firm's offer. By letter dated March 25, the Navy informed DGSC that Gilman's alternate offer was unacceptable when evaluated against the Navy's technical specification for the NSN. The agency reports that it was surprised to learn of the existence of this technical specification. After procurement responsibility was transferred to DGSC from the Defense Industrial Supply Center, the agency unsuccessfully

attempted to locate a competitive data package for the fenders; it used OEM part numbers in the RFP for lack of a better alternative. DGSC determined that the technical specification, which properly expressed the Navy's requirements, should have been included in the RFP.

Accordingly, DGSC issued amendment No. 0002 to the RFP, replacing the OEM part numbers with the technical specification, and eliminating the "products offered" clause and the "identification of sources of supply" clause. Gilman, Seaward, and the remaining offerors and any other responsible firms were given the opportunity to compete for this requirement. Performance on the contract awarded to Seaward was suspended by stop-work order on March 23, and DGSC stated its intention to maintain the status quo while work proceeded under the amended RFP. If, as a result of the offers received under the amended RFP, an offeror other than Seaward was selected for award, the agency would terminate Seaward's contract for the convenience of the government.

Since amendment No. 0002 effectively canceled the initial solicitation upon which the protest was based, rendering Gilman's protest of the award made under the terms of that solicitation academic, we dismissed that protest. See Morev Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102.¹ However, Gilman filed a protest of the amended solicitation, arguing that the changes made by amendment No. 0002 made it unduly restrictive of competition by allowing one supplier to "maintain an expensive lock" on fender contracts, and making it impossible to determine the actual manufacturer of items offered by bidders.

Our Bid Protest Regulations provide that a protest shall include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1994), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Med. Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2.

Where a protester complains of unduly restrictive requirements in a solicitation, we require a showing that the particular specification is not necessary to meet the

¹As a result, we will not consider Gilman's continued arguments concerning that solicitation.

agency's minimum needs. Bombardier, Inc., Canadair, Challenger Div., B-244328, June 17, 1991, 91-1 CPD ¶ 575; IBI Sec. Serv., Inc., B-233726.2, Apr. 6, 1989, 89-1 CPD ¶ 359. Gilman has made no such showing here. While Gilman asserts that the technical specification is restrictive because Seaward is the "dominant" or "only" manufacturer of fenders meeting this specification, it does not explain why other firms are not able to meet the specification. Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50. Further, the fact that the specification may correspond to the fenders manufactured by Seaward does not by itself render the specification unduly restrictive; the determinative consideration is whether the specification reflects the agency's minimum needs. See John F. Kenefick Photogrammetric Consultant, Inc., B-238384, May 4, 1990, 90-1 CPD ¶ 452. Since Gilman does not indicate precisely why the technical specification exceeds the agency's minimum needs, how it will restrict competition, or how it believes the requirement should be modified to make it acceptable, we conclude that Gilman has not established the likelihood that the agency's determination of its minimum needs was improper; we therefore have no basis for considering the matter. See Bombardier, Inc., Canadair, Challenger Div., supra.

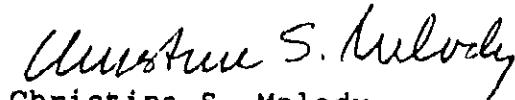
In its comments on the agency report, Gilman argues for the first time that the technical specification is "needlessly specific as to material and construction," and that the fenders Gilman offers are superior to those required under the specification because they absorb more energy per size and return less energy to the vessel; they do not emit toxic gasses if burned; and they are impervious to progressive or catastrophic failure when the exterior is damaged.

However, a protester must raise all available protest grounds in its initial protest filing; the protest system established by the Competition in Contracting Act of 1984 and implemented by our Regulations cannot tolerate piecemeal protest filings that disrupt the procurement process, which is designed to provide for expeditious resolution of protests. See 31 U.S.C. § 3554 (1988); Lenderking Metal Prods., B-252035; B-252036, May 18, 1993, 93-1 CPD ¶ 393. Since Gilman was clearly on notice of these allegations when it filed its initial protest on April 1, but failed to raise them at that time, we will not consider them.

Gilman also asserts that the agency improperly removed the solicitation's "identification of sources of supply" clause, making it impossible to determine the actual manufacturer of items offered by bidders. However, Gilman does not explain, and we do not discern, how this clause affects competition. The clause is prescribed for use in solicitations conducted

under other than full and open competition procedures. See Defense Federal Acquisition Regulation (FAR) Supplement § 217.7303(a). Since the original solicitation was restricted to specific sources of supply, it properly contained this clause, see generally, FAR § 6.302, which was deleted when the solicitation was amended to allow for full and open competition. Under the circumstances, we have no basis to object to the agency's decision to do so.

The protest is dismissed.



Christine S. Melody
Assistant General Counsel