



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

Decision

Matter of: Burnette Techno-Metrics, Incorporated
File: B-265658
Date: November 16, 1995

DECISION

Burnette Techno-Metrics, Incorporated protests the award of a contract to Fillmore Electric Co., Inc. under request for proposals (RFP) No. N61331-95-R-0029, issued by the Department of the Navy for gas (oxygen and carbon dioxide) analyzers. Burnette principally contends that the agency improperly found its proposal technically unacceptable. The protester also objects to the terms of the solicitation and challenges the small business size status of the awardee.

We dismiss the protest.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1995), protests concerning other than alleged solicitation improprieties must be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. Burnette argues that it had no basis for protest until publication of the July 18, 1995, Commerce Business Daily, which stated that the agency had made award to a higher priced offeror. Burnette admits that it knew, from a telephone conversation on May 25, that the agency had rejected its proposal. The Navy has furnished our Office with a copy of a letter to Burnette of that same date, advising the protester that the agency had eliminated its proposal from the competitive range as technically unacceptable and listing the precise deficiencies that formed the basis for rejection. Burnette was therefore on notice of its grounds of protest by early June, at the latest, and could not delay filing its protest until August, after it received notice of award. Aero Components Co. of Arlington, Inc.-Recon., B-243823.2, July 3, 1991, 91-2 CPD ¶ 21.

In any event, Burnette's challenge to the rejection of its proposal is general and conclusory in nature; Burnette does not attempt to rebut the agency's detailed findings regarding the technical unacceptability of its product. Burnette thus has failed to provide sufficient information to state a valid basis for protest on this ground. See 4 C.F.R. § 21.3(m); Robert Wall Edge-Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.

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The protest is also untimely to the extent that Burnette protests that the specifications were written to "lock out" any model of gas analyzer other than the Rosemount Analyticals NGA gas analyzer. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), require that such protests, alleging improprieties in a solicitation that are apparent prior to the time set for receipt of proposals, be filed prior to that time. Compressed Air Equip., B-246208, Feb. 24, 1992, 92-1 CPD ¶ 220. In any event, specifications based upon a particular product are not improper in themselves. In response to the protest, the agency has provided our Office with an explanation of how the specifications relate to its minimum needs. The protester has not responded to this explanation, except to reiterate its argument that the specifications were "written around" the Rosemount product. Absent an allegation that specific features, required by the solicitation, exceed the agency's minimum needs, the mere assertion that the specification was "written around" design features of a particular product does not provide a valid basis of protest. See Staveley Instruments, Inc., B-259548.3, May 24, 1995, 95-1 CPD ¶ 256.

Burnette's final ground of protest is that Fillmore is not a regular dealer or manufacturer of Rosemount analyzers. We will not consider this issue. Our Office does not determine the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (Supp. IV 1993). By law this matter is to be decided by the contracting agency, in the first instance, subject to review by the Small Business Administration, where a small business is involved, and the Secretary of Labor. The Pratt & Whitney Co., Inc.; Onsrud Mach. Corp., B-232190; B-232190.2, Dec. 13, 1988, 88-2 CPD ¶ 588.

The protest is dismissed.

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