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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest Alleging Awardee's Equipment Does Not Comply With Specifications]

FILE: B-195865

DATE: January 21, 1980

MATTER OF: Compac-Cutting Machine Corp. *DLG03654*

DIGEST:

1. Protest filed within 10 working days after protester learned of contract award is timely notwithstanding argument by agency that protest against responsiveness of bid should have been filed within 10 days of bid opening. Until award was made, agency had not taken position adverse to protester, which commenced filing period under Bid Protest Procedures.
2. Bid that does not reduce, limit or modify bidder's obligation to supply item in accordance with specifications is responsive.
3. Allegation that bidder, who submitted responsive bid, will not supply conforming item, based on past performance, relates to bidder responsibility, which is not reviewed by our Office except in circumstances not present here, and contract administration, a matter cognizable by the agency, not our Office.

DLG03655

Compac-Cutting Machine Corp. (Compac-Cutting) has protested the award of a contract to Wilmot Fleming Engineering Co. (Wilmot) under invitation for bids No. N00600-79-B-2957 issued by the Naval Regional Procurement Office, Washington, D.C. - *AGC00129*

The contract is for a quantity of pipe cutting and end preparation machines used to repair nuclear pipes in submarines. Compac-Cutting argues that Wilmot's machines do not comply with the specifications, its bid is nonresponsive and Wilmot is not a responsible bidder.

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Initially, the Navy takes the position that the protest of Compac-Cutting is untimely under our Bid Protest Procedures (4 C.F.R. part 20 (1979)). The Navy argues that because the protest was filed more than 10 working days after bid opening, it is untimely under 4 C.F.R. § 20.2(b)(2), which requires protests be filed within 10 working days after the basis of the protest is known or should have been known.

The Navy states that bid opening is the critical date since Compac-Cutting is alleging the item offered by Wilmot will not comply with the specifications and, in view of past competitions between the firms, Compac-Cutting should have known what item Wilmot was offering as of bid opening.

Compac-Cutting responds that under past decisions of our Office it was not required to file its protest until notified of the award to Wilmot, which it did.

We have held that a protester is not charged with knowledge of a basis for protest until the agency conveys its intent on a position adverse to the protester. Propserv Incorporated, B-192154, February 28, 1979, 79-1 CPD 138. Since Compac-Cutting was not aware that the Navy considered Wilmot's bid acceptable until it received the notice of award, its protest filed within 10 days is timely and will be considered on the merits.

Compac-Cutting's protest is based on the allegation that because of past procurements of this item from Wilmot, the Navy should have known that Wilmot is not going to supply conforming equipment.

In a prior procurement where Wilmot was the low bidder, it failed to timely submit an acceptable first article test report and was defaulted by the Navy. In a later procurement, certain problems developed with the Wilmot machines which, while complying with the letter of the specifications according to the Navy, required changes during performance.

While Compac-Cutting places great weight on the prior difficulties the Navy has had with Wilmot to

show that Wilmot's bid should have been rejected, we find them to be mainly irrelevant to the disposition of the instant protest.

Wilmot's bid submitted in response to IFB -2957 took no exceptions to the specifications or other requirements and was low in price. Since nothing on the face of the bid limited, reduced or modified Wilmot's obligation to furnish an item which would be in accordance with the terms of the solicitation, the bid was responsive. Radio TV Reports, Inc., B-192958, July 12, 1979, 79-2 CPD 27.

Whether Wilmot will supply a conforming item under the contract relates to the bidder's responsibility and to matters of contract administration. The contracting officer has made an affirmative determination of Wilmot's responsibility, which determinations are not reviewed by our Office except in circumstances not present here. While Compac-Cutting has cited Courier - Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323, as showing our Office will review the instant type of determination, Courier involved definitive responsibility criterion not present here. Further, matters of contract administration are cognizable by the agency, not our Office.

Accordingly, the protest is denied.



For the Comptroller General
of the United States