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**DECISION**



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

**FILE:** B-205791

**DATE:** April 22, 1982

**MATTER OF:** Riverport Industries, Inc.

**DIGEST:**

1. Allegation that low bid was based on expectancy that specification would be relaxed after award must be rejected as speculative since protester has not alleged that bid took exception to specifications and awardee is bound to deliver specified items at bid price.
2. GAO will review protests concerning contract changes only if it is alleged that at the time of award the agency intended to make such changes after award.
3. Protest of agency's allegedly improper actions in conducting negotiations is untimely since it was not filed with GAO within reasonable time after which protester should have known of grounds of protest.

Riverport Industries, Inc. protests the proposed award of a contract by the General Services Administration (GSA), under solicitation No. 5FCR20-81-140, for reusable shipping boxes with Grade C foam cushioning. Riverport alleges that prior contractual experiences suggest that the prices quoted by the low bidder, ARVCO Containers Corporation, on the instant solicitation indicate that ARVCO bid in the expectation of obtaining a waiver so that it may supply Grade B foam cushioning, a lesser quality product than the Grade C foam cushioning specified. The protest is denied in part and dismissed in part.

In support of its protest, Riverport refers to other contracts which, it alleges, were modified to permit the contractors involved (including ARVCO)

to furnish Grade B cushioning. There is no indication in the protest, however, that ARVCO's bid here took exception to the specifications. The firm, therefore, will be contractually bound to deliver the specified items at its bid price. Moreover, the contracting activity states that it does not intend to grant material waivers to the specifications after award. Thus the allegation that ARVCO's bid was not based on the specifications but rather on the expectancy of future changes must be rejected as speculative. See Lite Industries, Inc., B-200646, January 30, 1981, 81-1 CPD 55. Whether ARVCO in fact intends to furnish what the specifications call for is for the contracting officer to determine in establishing ARVCO's responsibility as a prospective contractor. The determination that a bidder is responsible is not reviewable by the Office except in circumstances which are not alleged here. See Proficiency Associates, Inc., B-198844.3, January 19, 1981, 81-1 CPD 29.

Furthermore, to the extent the protester believes ARVCO's low price establishes some impropriety in ARVCO's bid, we point out that the submission of a bid which a competitor regards as too low to meet the contract requirements does not constitute a legal basis for precluding or disturbing a contract award. See Swiss-Tex Incorporated, B-200809, B-200810, October 31, 1980, 80-? CPD 333.

Although Riverport's allegations concerning price contracts for reusable shipping boxes apparently were made to support its allegation that ARVCO may try to obtain a waiver under this contract, Riverport also seems to be objecting to the circumstances of those prior procurements. For example, Riverport contends that material waivers were improperly granted by GSA to ARVCO on a contract under solicitation No. 5FCB-20-80-140 and by McClellan Air Force Base on a contract under solicitation No. F04699-81-RA-061. These waivers allowed ARVCO to supply Grade B foam cushioning instead of Grade C as called for by the contracts. Riverport adds that GSA had insufficient information in reaching its waiver agreement because the agency agreed to a two percent price decrease, when the cost savings realized from the change in product quality should have been at least ten percent.

Contract modifications are matters of contract administration within the authority and responsibility of the procuring agency and issues with regard to them are generally not for resolution under our bid protest function. Our Office will only review protests concerning such changes if it is alleged that at the time of award the agency intended to make such changes after award. Aul Instruments, Inc., B-199416, 2, January 19, 1981, 81-1 CPD 31. Since no such allegations have been raised here, we will not consider the merits of this particular contention.

Riverport also objects to the manner in which negotiations were conducted under another prior GSA solicitation, No. 5FCB-DQ-81-065. Although it is not entirely clear, Riverport seems to be objecting to the fact that after initial offers were received, amendments were furnished to and negotiations were conducted with only three of the offerors. Each of these offerors -- none of which was ARVCO, the proposed awardee here -- was awarded a contract, the dates of which ranged from June 8 to September 2, 1981 and, according to the protester, one of the three contracts was modified to permit the substitution of Grade B foam for Grade C foam in consideration for a three percent reduction in the contract price. Riverport does not specifically so state, but we assume it was one of the offerors with which negotiations were not conducted.

We dismiss this objection as untimely. It is not evident from the protest when Riverport became aware of the alleged impropriety in the negotiations. In such cases, we have held that a protester is required to diligently pursue the matter by seeking within a reasonable time the information which reveals the basis for protest or else the protest must be rejected as untimely. See National Council of Senior Citizens, Inc., B-196723, February 1, 1980, 80-1 CPD 87. The negotiations in question occurred sometime between the due date for receipt of proposals, April 7, and the

award of contracts on June 8 and 15 and September 2, 1981. This protest was not filed with our Office until December 11, more than 3 months after the basis could have been discovered if inquiry as to the negotiation procedure had been made. Thus, the time taken to ascertain the grounds for protest was unreasonably long.

The protest is denied in part and dismissed in part.

*for* Milton J. Aoulan  
Comptroller General  
of the United States