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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Islip Transformer & Metal Co., Inc.

File: B-224346

Date: September 29, 1986

DIGEST

1. Protest against alleged failure of bidder to include a semiconductor device list with its bid is denied since record shows the list was submitted with the bid.
2. General Accounting Office will not review a challenge to a contracting agency's affirmative responsibility determination where there has been no showing that contracting officials may have acted fraudulently or in bad faith and where an allegedly deficient semiconductor device list (the submission of which the protester argues should have precluded an affirmative determination) was untimely protested.
3. General Accounting Office will not consider the merits of an untimely protest under significant-issue exception to the timeliness requirements since similar issues have been ruled on frequently in the past.

DECISION

Islip Transformer & Metal Co., Inc. (Islip), protests the award made to Sacramento Circuit Works (Sacramento) under U. S. Army Communications-Electronics Command invitation for bids (IFB) No. DAAB07-86-B-U006, for circuit card assemblies, teletypewriters, and related data items. Islip basically protests that Sacramento's bid is nonresponsive because an acceptable list of the semiconductor devices to be used in manufacturing the equipment was not submitted, and that Sacramento is not a responsible bidder.

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We deny the protest in part and dismiss it in part.

Bids were opened on February 19, 1986. By telegram dated February 20, and by supplemental letter dated February 26, Islip protested to the contracting agency that Sacramento's low bid price raised a question of whether the items would be furnished in accordance with the specifications.

After discussing this allegation with Islip; reviewing the Sacramento bid; and evaluating Sacramento's responsibility; the contracting agency awarded the contract to Sacramento on May 14. Islip then requested copies of the Sacramento semiconductor device list and the preaward survey of the awardee; in a June 12 telephone conversation, the contract specialist read the Sacramento list to Islip and mistakenly informed Islip that the list had been received on April 15, after bid opening. The list actually had been submitted by Sacramento with its bid. On June 13, Islip protested to our Office that Sacramento's bid was nonresponsive because, at bid opening, it did not include a semi-conductor device list. Subsequently, Islip further complained that Sacramento was nonresponsive, and that a proper preaward survey would have led to such a finding. In its July 29 response to the July 21 contracting agency report, Islip contended that the agency report showed Sacramento had listed incorrect part numbers and manufacturers on its device list, and argued that this showed Sacramento to be a nonresponsive bidder.

The agency report shows that Sacramento did submit a semi-conductor device list in a cover letter to the bid. Thus, this portion of the protest is denied. In any event, the IFB clause requesting the submission of this information with the bid stated that this information would be used in making a "determination of bidder's responsibility." The information therefore had nothing to do with the question of bid responsiveness and could be furnished to the agency at any time prior to award. The W.H. Smith Hardware Company, B-221878, Mar. 21, 1986, 86-1 CPD ¶ 284.

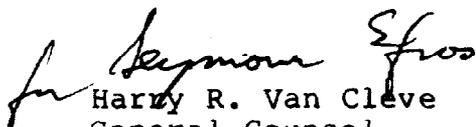
Sacramento's alleged nonresponsibility and the propriety of the preaward survey are not for our consideration. Our Office will not consider a protest of an affirmative responsibility determination unless there is a showing either that the determination may have been made fraudulently or in bad faith by contracting officials or that a definitive responsibility criterion was not met. Trail Blazer Services, B-220724, Feb. 12, 1986, 86-1 CPD ¶ 275; 4 C.F.R § 21.3(f)(5) (1986).

Here, the record shows that the contracting officer, in making his finding of responsibility, relied on a review of Sacramento by the agency's Contractor Evaluation Branch, which was verified by the preaward monitor of Defense Contract Administrative Services, San Francisco. Although Islip disagrees with the Army's finding, such disagreement establishes neither fraud nor bad faith on the agency's part, i.e., a specific or malicious intent on the agency's part to harm Islip. See Nations Inc., B-220935.2, February 2, 1986, 86-1 CPD ¶ 203.

To the extent Islip believes that the submission of a deficient semiconductor device list precluded an affirmative finding of Sacramento's responsibility, Islip's protest is untimely. Islip was informed of the information on the Sacramento list on June 12, prior to the filing of its original protest with our Office. However, Islip did not protest this alleged deficiency until its July 29 letter to our Office, filed more than 10 working days after Islip had received the information which serves as the basis for this portion of its protest. See 4 C.F.R. § 21.2(c)(2).

Finally, Islip contends that we should consider any untimely aspects of its protest on the merits because of the significant issues involved. Our Office will review an untimely protest under the significant-issue exception to our timeliness rules, 4 C.F.R. § 21.2(c), only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. ABC Appliance Repair Service, B-221850, Feb. 28, 1986, 86-1 CPD ¶ 215. We have on many occasions ruled on questions such as those involved here and, therefore, we will not invoke the exception.

The protest is dismissed in part and denied in part.


for Harry R. Van Cleve
General Counsel