



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Esilux Corporation

File: B-234689

Date: June 8, 1989

DIGEST

1. Protester who raises bare allegations with no specifics that competitor's offer is unacceptable has not provided detailed statement of legal and factual grounds of protest required by General Accounting Office Bid Protest Regulations.
2. A protester has no standing to claim an error in a competitor's offer, since it is the responsibility of the contracting parties--the government and the low offeror--to assert rights and bring forth the necessary evidence to resolve mistake questions.
3. Protester, third low offeror, is not an interested party to challenge award of a contract to the lowest acceptable offeror where it has not raised legally sufficient protest bases against the second low offeror.

DECISION

Esilux Corporation protests the award of a fixed-price contract to Pacific Safety Industries, Inc. (PSI), under request for proposals (RFP) No. N00600-88-R-2123 issued by the Naval Regional Contracting Center (NRCC), Washington, D.C., for phosphorescent paint kits. Esilux contends that PSI is not a responsible or acceptable offeror, that PSI's low price requires rejection of its offer by the contracting officer and that the evaluation criteria listed in the solicitation are ambiguous. Additionally, Esilux protests that the second low offeror, Pro-Line Paint Company, is also nonresponsible and unacceptable, and that its price also was too low as to require rejection of its offer.

We dismiss the protest.

The RFP was issued on March 24, 1988, for definite amounts of phosphorescent surface paint and phosphorescent submarine paint and related materials. Three firms submitted proposals. After discussions, the Navy awarded the contract to PSI on February 23, 1989, since it was found to have submitted the low acceptable offer of \$2,393,289.42. Pro-Line's acceptable offer was \$3,636,125.81 and Esilux's acceptable offer was \$6,160,020.75. Esilux was notified by letter dated February 23 that PSI had been awarded the contract and protested this award to the agency on February 28 and to our Office on March 3.

In its initial protest, Esilux contended that PSI is not a responsible offeror because PSI cannot possibly produce paint, as specified, at the "ridiculously low" price it quoted and because PSI's product will not meet the RFP's requirements.

After Esilux learned the identity of the second low offeror, it argued that Pro-Line's price is also too low, that it's offer was not responsive to the specifications, and that it is nonresponsible. Although Esilux indicated that it would furnish details in support of these allegations within 10 days, it failed to provide our Office with any additional information as to why Pro-Line's products did not comply with the specifications.

Since the protester gives no support or specifics for its bare allegations that Pro-Line's offer is unacceptable and that the firm is nonresponsible, we have no basis upon which to consider the matter. In this regard, our Bid Protest Regulations, 4 C.F.R. § 21.1(b)(4) (1988), explicitly require a detailed statement of the legal and factual grounds of protest. In any case, most of Esilux's contentions concern whether PSI and Pro-Line have the capability to meet contract requirements. These contentions are matters of responsibility which our Office will not review absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5). None of these circumstances exist here. Consequently, we dismiss these contentions. 4 C.F.R. § 21.3(m); T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435.

The protester also alleges that both the low offeror and second-low offeror have submitted such low offers that they must be verified to determine if a mistake were made, and even if no mistake were made, the bids must be rejected because their acceptance would be unconscionable. However,

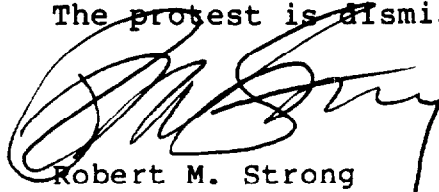
a protester has no standing to claim an error in a competitor's offer, since it is the responsibility of the contracting parties--the government and the low offeror--to assert rights and bring forth the necessary evidence to resolve mistake questions. Sabreliner Corp., B-231200, Aug. 31, 1988, 88-2 CPD ¶ 194; Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 CPD ¶ 383. Moreover, even if these firms had submitted offers which constitute a buy-in, there is no legal basis on which to object to the submission or acceptance of a below-cost offer. MEI Environmental Services--Reconsideration, B-231401.2 et al., June 16, 1988, 88-1 CPD ¶ 579; Black Warrior Constructors, B-230098, Feb. 23, 1988, 88-1 CPD ¶ 188. To the extent Esilux claims the lower prices shows these firms are nonresponsible, as indicated above, we will not review affirmative determination of an offeror's responsibility, absent circumstances not alleged to be present here. Keyes Fibre Co., B-225509, supra.

Although Esilux is more specific about its complaints as to why the low offeror, PSI, is unacceptable and not responsible, Esilux is not an interested party under our Bid Protest Regulations to contest the PSI award. 4 C.F.R. § 21.1(a). The Competition in Contracting Act of 1984 and our Regulations define an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(1); 4 C.F.R. § 21.0(a). Where, as here, a protester would not be in line for an award even if we were to resolve the protest in its favor, the firm generally lacks standing as an interested party. Corrugated Inner-Pak Corp. B-233710.2, Mar. 29, 1989, 89-1 CPD ¶ 326. Since award was made to PSI as the lowest acceptable offeror and because Esilux has not raised a legally sufficient protest against the second lowest acceptable offeror, Pro-Line. Esilux is not an interested party who has standing to protest the award. See South Bend Lathe, Inc., B-223639, Nov. 12, 1986, 86-2 CPD ¶ 550.

Finally, Esilux's protest that the solicitation's evaluation criteria are ambiguous and their relative weights were not disclosed in the RFP concern alleged solicitation deficiencies, which are required to be protested prior to the closing date for receipt of proposals in order to be timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1).

Since Esilux first protested these alleged deficiencies after award, these protest allegations are untimely and will not be considered.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', written over the printed name below.

Robert M. Strong
Associate General Counsel