

W. KUPPELL



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Biomarine Inc.
File: B-237232
Date: December 28, 1989

DIGEST

The General Accounting Office will not review a protest against challenging agency's affirmative determination of awardee's responsibility where there is no showing that the contracting officials may have acted fraudulently or in bad faith.

DECISION

Biomarine, Inc., protests the award of a contract to Carleton Technologies, Inc., under request for proposals (RFP) No. N00104-89-R-K530, issued by the Navy for underwater breathing equipment. We dismiss the protest.

The RFP was issued on April 27, 1989, on an unrestricted competitive basis with a closing date of July 12. Of the four offers received, Carleton's was low and a pre-award survey was requested from the Defense Contract Administrative Services Management Area (DCASMA) in Orlando, Florida to assist the contracting officer in making a decision on Carleton's responsibility. DCASMA provided the contracting officer with a "complete award" recommendation on August 22. Carleton verified its offer and the contracting officer determined the firm was responsible and thus awarded it the contract. Biomarine thereupon filed this protest.

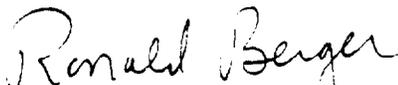
Biomarine principally argues that the awardee lacks the technical know-how to perform the contract and cannot perform the contract at its bid price. These contentions essentially question Carleton's responsibility, that is, its capacity and ability to perform in accordance with the contract requirements. The Navy affirmatively determined Carleton to be responsible based on information from a DCASMA preaward survey, and where, as here, there is no showing of possible bad faith or fraud, we will not review

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that determination. See Nationwide Glove Co., Inc.,
67 Comp. Gen. 155 (1987), 87-2 CPD ¶ 624; 4 C.F.R.
§ 21.3(m)(5) (1989).

The protester also alleges other procurement deficiencies, including, for example, that Buy American Act provisions were improperly omitted from the solicitation, and that the procurement should have been set aside for small business. Under our Bid Protest Regulations, protests of alleged defects that are apparent from the face of the solicitation must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Here, the absence of Buy American and small business set-aside provisions should have been apparent to Biomarine from the face of the RFP. Thus, since Biomarine failed to file a protest with the agency or our Office prior to the July 12 closing date, these issues are untimely.

The protest is dismissed.


Ronald Berger
Associate General Counsel