



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sonetronics, Inc.

File: B-237267

Date: February 12, 1990

Eugene Drexler, Esq., for the protester.
Barry Sax, Esq., Office of the General Counsel, Defense Logistics Agency, for the agency.
Katherine I. Riback, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

1. Protest against apparent solicitation improprieties--agency inclusion of an allegedly unqualified producer as an approved source and alleged "flaw" in specifications--is untimely when filed after bid opening.
2. Protest concerning capability of bidder to manufacture product is dismissed as involving a matter of affirmative responsibility which is not for review except in circumstances not applicable here.
3. Whether product delivered meets contract requirements involves a matter of contract administration which is not for review under the bid protest function.

DECISION

Sonetronics, Inc., protests the award of a contract under invitation for bids (IFB) No. DLA900-89-B-X189, issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency (DLA), for headset-microphones, to Roanwell Corporation. The headset-microphone is a qualified products list (QPL) item and the IFB stated that competition was restricted to approved sources, and listed three such sources. Sonetronics protests that Roanwell was not an approved source at the time of bid opening, and that Roanwell is not capable of manufacturing the product.

We dismiss the protest.

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The IFB, for an 18-month requirements contract, was issued on June 16, 1989, under the DESC master solicitation procedure. Under this procedure, suppliers are given a master solicitation that contains standard contract provisions, to use in conjunction with solicitations and contracts which are issued specifically referencing and incorporating the master solicitation terms. The qualified sources listed in the IFB at issue were Astrocom, Sonetronics, and Roanwell. Prior to bid opening, amendments to the solicitation extended bid opening until August 21, 1989, and changed the Milspec type number of the headset-microphone from H161F/GR to H161E/U, and subsequently to H161E/GR.

Three bids were received by the bid opening date from all three approved sources. Roanwell submitted the lowest evaluated bid price of \$82.96 per unit, and Sonetronics was next low with a bid price of \$89.90. Sonetronics informed the agency by letter on August 24, 1989, of its concern that Roanwell might not qualify as an approved source. The contract was awarded to Roanwell on September 21, 1989. On October 4, Sonetronics protested to our Office.

The protester contends that Roanwell was not an approved source at the time of bid opening because subsequent to becoming approved, Roanwell had changed ownership, changed location and had not produced the QPL headset-microphone for over 2 years.

DLA asserts that Sonetronics protest is untimely. We agree. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989), protests against apparent solicitation improprieties must be filed prior to bid opening. Here, the IFB specifically designated Roanwell as an approved source for the specified item. Accordingly, Sonetronics' protest of Roanwell as an approved source was required to be filed prior to the August 21 bid opening date. Sealcraft Corp., B-236774.2, Dec. 26, 1989, 89-2 CPD ¶ 596; Environmental Instruments, Inc., B-231692, July 14, 1988, 88-2 CPD ¶ 52; Teledyne CME, B-223609, Sept. 23, 1986, 86-2 CPD ¶ 338, aff'd on recon.; B-223609.2, Oct. 17, 1986, 86-2 CPD ¶ 461. Sonetronics first raised its "concern" to the agency after bid opening, in an August 24 letter which Sonetronics specifically stated was not a protest. Subsequently, Sonetronics untimely filed its protest with our Office, after the contract was awarded, on October 4.

In any event, Sonetronics argument is without merit since, in 1987, subsequent to the change of ownership at Roanwell, the agency conducted a reevaluation of that company and determined that Roanwell remained qualified. Also, we note

that Roanwell has certified in its bid that it will utilize the same location at which it was qualified in performing this contract. Finally, Roanwell certified to the DLA prior to this award that even though it had not produced the item for over 2 years, Roanwell still had the capabilities and facilities necessary to produce the headset-microphone. DLA determined that Roanwell's certification and test data were sufficient, and DLA determined that Roanwell retained its status as a qualified source before award of the contract, as required by section M-2 of the master solicitation.

The protester also contends that there is a "flaw" in the solicitation because the agency is procuring an "outmoded" headset rather than the "updated" H161F version. The protester's allegation in this regard is also untimely on the basis cited above, since it concerns an alleged solicitation impropriety but was not protested until after bid opening. In this regard, we note that Sonetronics anticipates a contract modification that will state that the agency is procuring the new H-161F version, of which they are the only qualified source. This assertion is based on speculation and is incorrect. The agency states that it deliberately specified the model chosen in order to obtain competition, and that it has no plans to further amend the requirements concerning the headset type.

Finally, Sonetronics asserts that Roanwell is not capable of manufacturing the product as described on the QPL, and has no intention of supplying the DLA with a conforming QPL item because Roanwell has made no attempt to procure three significant components which are manufactured by the protester. Whether Roanwell is capable of manufacturing the product is a matter of responsibility which we do not review absent circumstances not applicable here. 4 C.F.R. § 21.3(M)(5). Also, whether the product Roanwell delivers complies with the contract requirements involves a matter of contract administration which this Office does not review under its bid protest function. 4 C.F.R. § 21.3(m)(1).

The protest is dismissed.



Robert M. Strong
Associate General Counsel