



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: The Gilman Corporation

File: B-256754

Date: April 15, 1994

DECISION

The Gilman Corporation protests the award of a contract to Seaward International under request for proposals (RFP) No. DLA451-93-R-0650, issued by the Defense Logistics Agency (DLA) for marine fenders. The protester argues that it offered an equivalent item at a lower price, giving the agency ample time to evaluate its offer, and that the agency improperly disregarded that offer.

We dismiss the protest as academic.

DLA, through the Defense General Supply Center (DGSC), is the procuring agency for these marine fenders which are to be supplied to the Navy. The RFP, issued on March 16, 1993, described these fenders by their National Stock Number (NSN), as well as by the original equipment manufacturer (OEM) part numbers of three manufacturers, including Seaward. The RFP also contained DLA's "products offered" clause, which permits firms to offer alternate products not made by an OEM. Gilman responded to the RFP by offering an alternate product, and the firm's offer was forwarded to the Navy for evaluation, but DGSC reports that the Navy did not promptly respond to its requests for an expeditious evaluation of that offer. In view of the diminished quantities of fenders in stock, DGSC awarded the contract to Seaward, which offered its own part number.

After Gilman filed this protest, DGSC took steps to expedite the Navy's evaluation of the firm's offer. By letter dated March 25, the Navy informed DGSC that Gilman's alternate offer was unacceptable when evaluated against the Navy's technical specification for the NSN number. The agency states that it was surprised to learn of the existence of this technical specification. After procurement responsibility was transferred to DGSC from the Defense Industrial Supply Center, the agency unsuccessfully attempted to locate a competitive data package for the fenders; it used OEM part numbers in the RFP for lack of a better alternative. DGSC determined that the technical

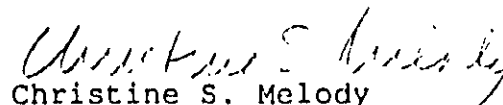
specification, which properly expressed the Navy's requirements, should have been included in the RFP.

Accordingly, DGSC issued amendment No. 0002 to the RFP, replacing the OEM part numbers with the technical specification, eliminating the "products offered" clause, and making other appropriate changes. Gilman, Seaward, and the remaining offerors and any other responsible firms have been given the opportunity to compete for this requirement. Performance on the contract awarded to Seaward was suspended by stop-work order on March 23, and DGSC states that it intends to maintain the status quo while work proceeds under the amended RFP. If, as a result of the offers received under the amended RFP, an offeror other than Seaward is selected for award, the agency will terminate Seaward's contract for the convenience of the government.

Since amendment No. 0002 effectively cancels the initial solicitation upon which the protest was based, Gilman's protest of the award made under the terms of that solicitation is academic. See Morey Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102. We do not consider academic protests because to do so would serve no useful public policy purpose. Tri-Ex Tower Corp., B-245877, Jan. 22, 1992, 92-1 CPD ¶ 100. However, we will consider, by separate decision, Gilman's second protest, B-256754.2, in which it argues that the amended solicitation is unduly restrictive.

Gilman incorrectly argues that its protest is not academic because DGSC has only suspended Seaward's contract, not terminated it. When our Office sustains a protest and recommends that the procuring agency reopen a competition, typically we do not require the agency to terminate an awarded contract unless it determines that the initial awardee will not be the awardee after the corrective action is taken. To do so would serve no practical purpose, since the initial awardee may retain the award. See Moon Eng'g Co., Inc., B-251698.7, Dec. 14, 1993, 93-2 CPD ¶ 315.

The protest is dismissed.


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