



Comptroller General
of the United States

122799

Washington, D.C. 20548

Decision

Matter of: Midwest Dynamometer & Engineering Company
File: B-258378
Date: September 9, 1994

DECISION

Midwest Dynamometer & Engineering Company protests the award of a contract to Vibrometer under request for quotations (RFQ) No. 94-0010, issued by the Environmental Protection Agency.

We dismiss the protest.

The protester challenges the award to Vibrometer on the ground that the award was not in compliance with the Buy American Act and the implementing provisions in Federal Acquisition Regulation (FAR) part 25. The protester appears to challenge the propriety of award to any bidder who does not offer a domestic product. The protester concedes, however, that the RFQ did not contain FAR § 52.225-3, regarding application of the Buy American Act limitations to procurements of supplies. Accordingly, there is no basis to object to award under the RFQ on the ground that such an award does not comply with Act. See, e.g., Wackenhut Int'l, Inc., B-241594, Feb. 14, 1991, 91-1 CPD ¶ 172 (agency may not evaluate offers on any basis other than that stated in the evaluation).

To the extent that the protester contends that the RFQ should have contained FAR § 52.225-3, the protest is untimely. Our Bid Protest Regulations specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1994); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. The absence of the FAR provision here is such an apparent impropriety; accordingly, the protester was required to protest the omission prior to bid opening. Since the

protester did not timely object to the omission, it may not now argue that the provision should have been applied. Anderson Columbia Co., Inc., B-249475.3, Feb. 5, 1993, 93-3 CPD ¶ 105.

The protest is dismissed.

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