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# Decision

**Matter of:** Auburn Manufacturing, Inc.

**File:** B-423308; B-423308.2

**Date:** March 26, 2025

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## DIGEST

1. Protest challenging agency's decision to award a contract to an offeror who quoted a foreign end product is dismissed for failure to state a valid basis of protest where the protester fails to demonstrate that the agency has violated a procurement statute or regulation.
  2. Protest challenging agency's alleged failure to apply a price evaluation factor to a foreign end product quotation is dismissed as untimely where the protester knew the basis of its protest allegation at the time it filed its initial protest but failed to timely raise the allegation.
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## DECISION

Auburn Manufacturing, Inc., a woman-owned small business of Mechanic Falls, Maine, protests the award of a contract to Elite Textile Trading LLC, a small business of Mission Viejo, California, under request for quotations (RFQ) No. SPMYM2-25-Q-0512 (Q-0512), issued by the Defense Logistics Agency (DLA) for silica glass cloth. The protester contends that the agency's evaluation of the awardee's quotation was unreasonable.

We dismiss the protest.

## BACKGROUND

The agency issued the solicitation on December 4, 2024, for 50-yard rolls of silica glass cloth. Req. for Dismissal, encl. 1, RFQ at 1, 10.<sup>1</sup> The solicitation contemplated the award of a contract to the offeror whose quotation was the most advantageous to the government, considering technical, past performance, delivery, and price. *Id.* at 20. DLA awarded the contract to Elite Textile on January 23, 2025. Req. for Dismissal, encl. 3, Elite Textile Trading Award at 1. The protester learned about the award on the same day. Protest at 3.

Auburn protested to our Office on February 3. The agency filed a request for dismissal on February 12, arguing that the protester's allegation was legally insufficient. Req. for Dismissal at 2. As part of the dismissal request, DLA submitted the awardee's quotation as an exhibit. Req. for Dismissal, encl. 2, Awardee's Quotation. In responding to the dismissal request, Auburn raised a supplemental protest, alleging that "Elite's silica cloth cannot meet the specifications set forth in the RFQ." Resp. to Req. for Dismissal at 2. The protester subsequently withdrew this allegation on February 26. Notice of Withdrawal of Supp. Protest Allegation at 1.

## DISCUSSION

Auburn argues, in its initial protest, that DLA should have deemed Elite Textile's quotation to be technically unacceptable because the awardee offered a foreign end product, which, the protester alleges, violates the Buy American Act. Protest at 4-5. According to the protester, based on the awardee's low price ("less than half of [Auburn's] unit price") and Auburn's "extensive knowledge of the silica cloth industry, as well as publicly available customs information, it is unequivocal that Elite's silica cloth is being imported from China . . . which is not a qualifying country under DFARS [Defense Federal Acquisition Regulation Supplement] 252.225-7001." *Id.* at 4. As a result, the protester contends Elite Textile's product "is not eligible for award, and its proposal should have been rejected." *Id.*

In response, DLA asserts that although the DFARS establishes a preference for domestic and qualifying country end products, there is no requirement that the agency eliminate a quotation from competition for quoting a foreign end product. Req. for Dismissal at 2. In the agency's view, because Auburn has failed to allege a violation of statute, regulation, or procurement law, the protest should be dismissed. *Id.* at 3.

### Buy American Act Preference

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition

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<sup>1</sup> Citations are to the Adobe PDF page numbers of the documents provided in the agency's request for dismissal.

are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our regulations require a protester to set forth a detailed statement of the legal and factual grounds of protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f). These requirements contemplate that the protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Delta Risk, LLC*, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 10.

Relevant here, the solicitation incorporated by reference DFARS clause 252.225-7001, “Buy American and Balance of Payments Program.” Req. for Dismissal, encl. 1, RFQ at 12. The clause implements the Buy American statute, 41 U.S.C. §§ 8301-8305, and the Department of Defense’s Balance of Payments Program by establishing a preference for domestic end products over foreign end products, except for foreign end products of certain qualifying countries. DFARS 252.225-7001; *FitNet Purchasing Alliance*, B-410797, February 12, 2015, 2015 CPD ¶ 78 at 2.

The record demonstrates that the awardee--consistent with the requirements of the solicitation--disclosed in its quotation that it was supplying a product from China, which is not a domestic or qualifying country end product. Req. for Dismissal, encl. 2, Awardee’s Quotation at 27, 32, 55. As our Office has explained, while the Buy American provisions establish a preference for domestic end products, DFARS clause 252.225-7001 does not prohibit the acquisition of foreign end products from non-qualifying countries. *FitNet Purchasing Alliance*, *supra* at 4 n.3. Rather, if a vendor quotes a foreign end product, clause 252.225-7001 of the DFARS requires the vendor to properly disclose that fact in its quotation. DFARS 252.225-7001(c) (“The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American—Balance of Payments Program Certificate provision of the solicitation.”)

Further, the record does not show--nor does the protester argue--that any other solicitation provision would require DLA to eliminate the awardee from competition for failing to quote a domestic or qualifying country end product. As such, the protester has not provided sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations, and thus fails to state a valid basis of protest. 4 C.F.R. § 21.5(f); *Steiner Constr. Co., Inc.*, B-421254.9, B-421254.10, Dec. 4, 2023, 2023 CPD ¶ 268 at 4-5.

#### Price Evaluation Factor

Next, in response to the agency’s request for dismissal, the protester attempts to reframe its argument, now arguing that, “[i]mplicit in that [initial protest] argument is the fact that, because Elite’s product was likely from China, the Agency was required to add a price evaluation factor to Elite’s low offer,” and that there was “no indication that the

Agency properly applied the evaluation factor in this case.”<sup>2</sup> Resp. to Req. for Dismissal at 2.

As discussed above, Auburn’s initial protest argued that DLA should have eliminated the awardee from the competition for quoting a foreign end product. Protest at 4. The protest neither references DFARS section 225.205(c), nor mentions the price evaluation factor--let alone asserts the 50 percent evaluation factor as a basis to challenge the award to Elite Textile. See *generally* Protest. Our review confirms that nothing in the initial protest suggests Auburn was arguing--implicitly or otherwise--that the agency had failed to apply a price evaluation factor to the awardee’s quotation. As such, we consider the price adjustment allegation to be a new argument raised, for the first time, in the protester’s response to the agency’s dismissal request on February 14.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Further, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *IAP-C4ISR, LLC*, B-421726.2 *et al.*, Feb. 12, 2024, 2024 CPD ¶ 52 at 16 n. 16; *Star Food Serv., Inc.*, B-408535, Nov. 1, 2013, 2013 CPD ¶ 246 at 4.

Here, the award announcement, issued by DLA on January 23, provided Auburn with notice of the awardee’s low price which, coupled with the protester’s “extensive knowledge of the silica cloth industry,” formed the basis of Auburn’s protest that “Elite’s silica cloth is manufactured in China” and is therefore “not eligible for award, and its proposal should have been rejected.” Protest at 4. Thus, the facts that formed the basis for Auburn’s initial protest are the same operative facts underlying this new argument that the agency failed to apply a 50 percent price evaluation factor to the awardee’s foreign end product. Resp. to Req. for Dismissal at 2. The protester, however, did not raise this challenge in its initial protest on February 3, but, instead, waited to assert this new allegation in its February 14 response to DLA’s dismissal request. There is no evidence that--and the protester provides no explanation for why--the arguments could not have been timely asserted in its initial protest. Our protest

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<sup>2</sup> The provisions of DFARS clause 252.225-7000 require vendors to certify that their end products are one of the following: domestic; from a qualifying country; or foreign. DFARS 252.225-7000(c). If an end product is identified as a foreign end product, the agency must evaluate the quotation in accordance with part 225 of the DFARS, which instructs the agency to apply a 50 percent evaluation factor to price. DFARS 225.502(c)(ii)(E), (iii)(A); *Sea Box, Inc.*, B-420737, July 25, 2022, 2022 CPD ¶ 191 at 2.

process does not contemplate consideration of a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3 n.2. As such, we dismiss this allegation as untimely. *Id.*; 4 C.F.R. § 21.2(a)(2).

The protest is dismissed.

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General Counsel