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L. J. Baker, Pl. 2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-192309

DATE: August 7, 1978

MATTER OF: Illitron

DIGEST:

1. Matter of successful subcontractor's responsibility is not reviewed by this Office, absent exceptions not satisfied here. Even if delivery schedules are relaxed because during contract performance awardee proves to be incapable, that determination is a matter of contract administration which this Office does not review.
2. Allegations raised more than three months after protester was informed of award to another, is untimely because protest was not filed within 10 days after the protester knew or should have known of the basis for its protest. In any event, protest was not raised within 10 days of constructive notice of initial adverse agency action on possible protest to agency.

Illitron, a division of Illinois Tool Works, Inc., protests award by Newport News Shipbuilding and Drydock Co. (Newport News) of a subcontract to Granite State Machine Company (Granite), under Newport News' Inquiry 616D-2085-M1. The procurement is for eight cable handling systems for towed sonar arrays to be installed on eight SSN 680 class submarines, presently being constructed by Newport News for the Navy.

Illitron asserts that Granite, which was the low bidder for the subcontract, has neither the experience nor the financial capability to perform the subcontract. Illitron also asserts that Granite cannot meet the delivery date of October 1978 and thus Newport News "has evidently accepted a later delivery date from Granite State." Illitron also asserts that the selection of Granite State as a subcontractor will result in higher costs to Newport News and ultimately the Navy than if Illitron was selected, because Illitron's product has been tested under a prior subcontract. Finally, Illitron asserts that Newport News, in

making its award determination, should have considered the increased costs to the Navy for provisioning, spares, and training caused by the existence of equipment supplied by two different subcontractors.

We are unable to tell from the protester's submission whether the protest satisfies the prerequisites for review of subcontract awards stated in Optimum Systems, Inc.--Subcontract protest, 54 Comp. Gen. 767 (1975), 75-1 CPD 166. However, even if the protester were able to show that this subcontract award is reviewable, the procurement issues raised are not.

First, the protester's allegations regarding the experience and financial capability of Granite concerns the determination that the awardee is responsible. This Office does not review such protests unless fraud is alleged on the part of the contracting officer or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See International Computaprint Corp., 55 Comp. Gen. 1043 (1976), 76-1 CPD 289. It is not alleged here that either of these two exceptions apply. Consequently, the issue of Granite's responsibility would not be considered by this Office. Moreover, the allegation that a later delivery date has been accepted appears to have been drawn from the protester's judgment of the awardee's capabilities rather than from actual knowledge of that fact. Should it become necessary in the future to extend the delivery dates, that decision will be a matter of contract administration and would not affect the validity of the subcontract award. Consequently, the matter is not for consideration by this Office. See Maritime Supply Corp., B-188915, August 30, 1977, 77-2 CPD 161.

Finally, the protester's allegation that Newport News and ultimately the Navy will incur greater testing and support costs if the protester is not selected for the subcontract is untimely. The Bid Protest Procedures of this Office provide that: "If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual constructive knowledge of initial adverse agency action

will be considered * * *." 4 C.F.R. 20.2(a) (1977). Here, Illitron notified the Navy, by letter of March 21, 1978, that it would be a mistake for the Navy to sub-contract with anyone but Illitron. The Navy has informed us that it did not formally respond to the letter, but rather discussed the matter orally with Illitron, because it did not interpret the letter as a protest. Assuming, however, that the letter to the Navy was a protest, Illitron should not have waited three months before filing its protest with this Office because it was on constructive notice, through the passage of time and agency inaction, that the agency was adverse to its position. See Dalux, Inc., 52 Comp. Gen. 792 (1973). Thus its subsequent protest to this Office was untimely. If the letter to the Navy was not a protest, and thus Illitron protested initially to this Office, our Bid Protest Procedures require that the protest be filed "not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. 20.2(b)(2) (1977). Here, Illitron protested more than three months after it was informed on March 15, 1978 that it was not the successful bidder. Consequently, whether or not the letter to the Navy was a protest, its protest to this Office was untimely and is not for consideration.

Accordingly, the protest is dismissed.


Deputy Comptroller General
of the United States