

DECISION

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

28021

FILE:

B-211907

DATE: April 19, 1984**MATTER OF:**

Metermod Instrument Corporation

DIGEST:

1. Protest asserting that agency should restrict competition to approved sources listed on drawing referenced in the solicitation is inappropriate for review under GAO bid protest function, since it conflicts with objective of that function, specifically, to insure attainment of full and free competition.
2. GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith by procurement officials or misapplication of definitive responsibility criteria, circumstances not present here.
3. Protest that the awardee will not deliver domestic end products in performing its contract concerns a matter of contract administration for the contracting agency and will not be reviewed by GAO.

Metermod Instrument Corporation protests the award of a purchase order for 44 electrical meters by the Department of the Navy, Aviation Supply Office, Philadelphia, Pennsylvania to A & M Instrument, Inc. under request for quotations (RFQ) No. N00383-83-Y-7517. The protester alleges that the Navy improperly accepted a quotation for a nonconforming item from an unapproved source. The protester also contends that the awardee will not furnish domestic end products in compliance with the requirements of the Buy American Act, 41 U.S.C. § 10a-d (1976). We deny the protest.

The RFQ was issued pursuant to the small purchase procedures of Defense Acquisition Regulation § 3-600 et seq. and identified the item as Federal Stock Number 6625-01-082-1479EE, General Electric part number 7539023P16. Three quotations were received and A & M was the low quoter at \$5,709. Metermod was second low at \$10,676.60 with

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General Microwave Corporation third low at \$16,500. At the government's request, A & M submitted to the contracting officer two drawings, referenced in the RFQ, which it proposed to use in the manufacture of the item, including General Microwave drawing No. 5451, Revision D. (General Microwave is a subcontractor of General Electric for this item.) A & M also advised the Navy that a modified version of its item was listed on a separate Department of Defense Qualified Products List. After technical evaluation, the agency determined that A & M's item was fully acceptable and issued the firm a purchase order for the stated quantity. This protest followed.

Metermod contends that the General Microwave drawing referenced in the RFQ, which includes the name of Metermod as an approved source, is a source control type. Consequently, it is Metermod's position that the award to A & M is unfair, since it and General Microwave are the only two companies approved by General Electric as sources for this electrical meter. Metermod further notes that the drawing specifies that substitute items are not authorized for use without testing and approval by General Microwave or by the Navy. In addition, Metermod argues that because A & M's electrical meter has not been subject to necessary testing and has failed certain unspecified "prime contractor testing," the Navy should consider A & M ineligible for award and restrict the competition only to Metermod and General Microwave without soliciting or considering quotations from any other firms.

In the present case, Metermod, by contending that only it and General Microwave are the approved sources, essentially is asserting that A & M was not eligible to compete under the express terms of the solicitation. We do not agree. The drawing was not a source control type, since it did not require that an offeror be an approved source in order to compete. Rather, it appears that the drawing was submitted by General Electric under a prior procurement and the Navy's subsequent use demonstrates that the Navy has accepted procurement responsibility for the meter. Under these circumstances, the use of the drawing in the current unrelated procurement imposes no duty on the Navy to solicit only those companies which possessed an approved source rating from General Electric. See A & M Instrument, Inc., B-194554, September 4, 1979, 79-2 CPD 173.

To the extent that Metermod is asserting that the Navy should nevertheless have restricted the competition to only

contractor-approved sources, we will not consider such an assertion. The sole premise of Metermod's contention is that the government's interest as user is not adequately protected by purchasing the item from an unapproved source whose product has not been sufficiently tested. Presumably, Metermod would benefit if it were able to convince the Navy of its position because it could then be considered as one of only two potential approved suppliers. Metermod's asserted economic interest is not a protectable one under our bid protest function, the purpose of which is to insure that free and open competition to the maximum practicable extent is obtained. Miltope Corporation--Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417, aff'd on reconsideration (second), July 1, 1977, 77-2 CPD 3. In other words, Metermod's allegations are not a matter of legal concern because the effect of including other firms in the procurement is consistent with the statutory requirements to broaden competition. Joseph Pollak Corporation, B-209899, December 23, 1982, 82-2 CPD 573; Worthington Group, McGraw-Edison Company, B-207348, et al., June 4, 1982, 82-1 CPD 534.

Further, contracting officials and user activities are responsible for procuring supplies and services that meet their minimum needs and they must suffer any difficulties due to inadequate contract deliverables. For these reasons, absent evidence of fraud or willful misconduct on the part of such officials, which has not been alleged, we have consistently refused to review contentions that agencies have improperly broadened competition. See Grove Manufacturing Company, B-202531, August 17, 1981, 81-2 CPD 147; Constantine N. Polites & Co., B-198089, June 23, 1981, 81-1 CPD 518. Accordingly, we decline to consider Metermod's allegation that the Navy improperly broadened competition by accepting a quote from an unapproved source.

Next, a portion of Metermod's protest questions A & M's fitness as a potential supplier and its ability to provide the specified electrical meters. However, by awarding the purchase order to A & M, the contracting officer necessarily found the firm to be a responsible, prospective contractor. See Warfield & Sanford, Inc., B-206929, April 20, 1982, 82-1 CPD 365. We do not review an agency's affirmative determination of responsibility of a prospective contractor unless there is a showing of possible fraud or bad faith on the part of the procuring officials or that the solicitation contains definitive responsibility criteria which the procuring officials failed to apply. Domar Industries, Co., Inc., B-202735, September 4, 1981, 81-2 CPD 199. Neither exception is applicable here.

Metermod also alleges for the first time in its comments on the agency report that Revision G, rather than Revision D, is the current General Microwave drawing and that therefore the Navy improperly accepted an item based on an obsolete drawing. (The RFQ did not specify any particular revision.) The Navy states that it was unaware of the Revision G drawing and that the protester refused to provide the Navy a copy of the drawing when requested to do so after the Navy received the protester's comments. The Navy has since acquired a copy of the drawing and states that it will use this drawing for future procurements of the item. However, the Navy flatly states that its technical experts consider A & M's item, manufactured to the Revision D drawing, to be fully acceptable for its present purposes.

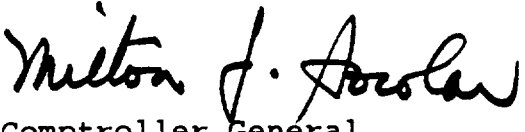
From the record, we cannot fault the Navy for failing to award the purchase order for the item based on the most current revision of the General Microwave drawing. First, there is no evidence in the record to suggest that the requirements of the solicitation were not based on the best information then available to the Navy. Second, A & M's item fully satisfied the Navy's current needs. Third, A & M has delivered the items in question and the Navy states that it will acquire further requirements for this item based on the current revision to the drawing. We also note that Metermod failed to question the propriety of the initial RFQ, which did not specify any drawing revision, prior to the initial closing date. We further point out that, in view of the acceptability of the Revision D item, the premise of Metermod's contention is again that the government's interest as user is not adequately protected by an item manufactured to a less restrictive Revision D specification. See Miltope Corporation--Reconsideration, supra. Accordingly, we see no reason to disturb the award for this reason.

Finally, concerning Metermod's contention that A & M will not supply domestic end products, we merely note that A & M, by the express terms of the solicitation, offered to furnish supplies of domestic origin. Where, as here, an offeror does not exclude any end products from the Buy American requirements of the solicitation and does not indicate that it is offering anything other than domestic end products, the acceptance of its offer will result in an obligation on the part of the offeror to furnish domestic end products. Moreover, compliance with that obligation is a matter of contract administration for the contracting

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agency and not our Office. Therefore, we will not review assertions that the firm will not comply with that obligation. Domar Industries Co., Inc., B-202735, September 4, 1981, 81-2 CPD 199.

The protest is denied.

for 
Comptroller General
of the United States