

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of ECOLAB, INC.
Under DGS No. RFQ 57061

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Docket No. MSBCA 1453

August 2, 1989

Rejection of Bids - Resolicitation - The procurement officer reasonably determined that resolicitation was necessary where protests filed after bid opening revealed that the RFQ specifications were defective.

APPEARANCE FOR APPELLANT:

NONE

APPEARANCE FOR RESPONDENT:

Michael P. Kenney
Assistant Attorney General
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

This timely appeal involves a denial by the Department of General Services (DGS) of Appellant's protest of the DGS procurement officer's determination to reject all bids and resolicit.

Findings of Fact

1. In February of 1989, DGS issued RFQ 57061 for a statewide multi year procurement of dishwashing compounds.
2. Several bids were received and opened on March 17, 1989. Appellant was the apparent low bidder.
3. Two other bidders protested on varying grounds. As a result of consideration of certain grounds of these protests, the DGS procurement officer determined that the RFQ specifications were defective¹ and therefore determined to reject all bids and rebid the work on the basis of revised specifications that would clearly delineate the State requirements.
4. Appellant sent a letter to DGS dated March 22, 1989, which was received by DGS on March 28, 1989. This letter indicated Appellant's "intent to protest any award made to any bidder other than Ecolab Inc. resulting from those protests," addressed the grounds of protest asserted by its competitors and

¹ The defects involved the procurement officer's technical determination that the specifications in the original RFQ did not sufficiently make it clear (1) that only "hard water" detergent was acceptable; (2) what the acceptable parameters of a "closed dispensing system" were and (3) that either a solid product or a powdered product was acceptable.

provided its interpretation concerning whether the specifications were defective.

5. By letter dated May 31, 1989, the DGS procurement officer responded to Appellant's letter of March 22, 1989. The response treated the "intent to protest" as a protest and denied it on grounds that the specifications were not clear and that the RFQ would be reissued with clarified specifications. From this denial Appellant appealed to this Board on June 12, 1989. In its appeal to this Board, Appellant made several suggestions concerning conditions under which the resolicitation should be conducted.

6. The Agency Report reflects that the specifications were ambiguous in several respects and that the RFQ would be rebid with clarified specifications.

7. Appellant did not comment on the Agency Report. Neither party requested a hearing.

Decision

Assuming arguendo that Appellant's letter of March 22, 1989 noting its "intent to protect" should the contract be awarded to one of its protesting competitors constituted a protest (i.e. invokes the dispute resolution procedures of the General Procurement law), the asserted basis for such protest is moot since no contract was awarded to anyone and the solicitation was withdrawn. See Boland Trane Associates, Inc., MSBCA 1084, 1 MSBCA ¶101 (1985). The supplies sought are to be rebid with clarified specifications. The Appellant has not met its burden to show that the decision of the DGS procurement officer that the original specifications were defective was unreasonable nor has it shown that the determination to resolicit with clarified specifications was improper. See Solon Automated Services, Inc., MSBCA 1046, 1 MSBCA ¶10 (1982), rev'd. Misc. Law Nos. 82-M-38 and 82-M-42 (Cir. Ct. Balto. Co., Oct. 13, 1982); Section 13-206, Division II, State Finance and Procurement Article; COMAR 21.06.02.03c(1). See also Clark Maryland Terminals, et al, MSBCA 1424, 2 MBSCA ¶205 (February 14, 1989).

Concerning Appellant's suggestions contained in its appeal regarding how the resolicitation should be conducted we simply note that bidders are required under the law to initially attempt to resolve a perceived problem in a solicitation with the procurement agency involved. This Board only has jurisdiction over matters that have been initiated with the procurement officer and an appeal taken from final agency action thereon. Sections 15-215 to 15-220, Division II, State Finance and Procurement Article.

For the foregoing reasons, the appeal is denied.