



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: H Power Corporation

File No.: B-258416

Date: September 13, 1994

DECISION

H Power Corporation (HPC) protests the award of a contract to Ball Aerospace under request for proposals (RFP) No. MDA904-94-R-3506, issued by the Maryland Procurement Office, for the development and manufacturing of light weight fuel cells. HPC alleges that the award is improper because Ball intends to subcontract with a Canadian firm, and because HPC proposed lower costs than Ball.

We dismiss the protest.

With respect to HPC's contention that Ball intends to subcontract with a Canadian firm, we are unaware of any bar to subcontracting with Canadian firms--nor has HPC advised us of any such bar. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, 4 C.F.R. § 21.1(c)(4) (1994), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). Without some showing that such subcontracting is improper, HPC's claim fails to state a valid basis of protest and will not be considered.

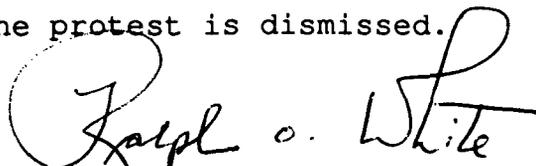
To the extent HPC contends that there should be a Canadian subcontracting prohibition for this requirement, its protest is untimely. Protests alleging a solicitation impropriety--such as an RFP's failure to include a prohibition against subcontracting with Canadian firms--must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); Cleveland Telecommunications Corp., B-247964.3, July 23, 1992, 92-2 CPD ¶ 47; aff'd, B-247964.4, Nov. 12, 1992, 92-2 CPD ¶ 340. Since HPC did not raise this challenge until September 8--almost seven months after the RFP's February 15 closing date, and two months after the July 11 award to Ball--this protest ground is untimely.

We also dismiss HPC's contention that it should receive award because HPC submitted a lower cost offer than Ball. A protester's assertion that it should have received the award solely because it offered a lower price or cost than did the awardee fails to state a valid basis for protest where, as

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here, the RFP provided that award would be based on technical factors as well as cost. See Stewart-Warner Elecs. Corp., B-235774.3, Dec. 27, 1989, 89-2 CPD ¶ 598. Since the solicitation here did not provide for award solely on the basis of cost--and in fact, emphasized that technical merit was more important than cost--this ground of protest is dismissed.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ralph O. White". The signature is written in dark ink and is positioned above the typed name.

Ralph O. White
Acting Assistant General Counsel