

Protest of
 HUDSON LOCK, INC.
Solicitation No.
337100-89-A-0020

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) Date: March 27, 1989
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) Protest No. P.S. 89-09
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DECISION

Hudson Lock, Inc. (Hudson), protests the proposed contract award under Solicitation No. 337100-89-A-0020, issued on December 20, 1988, by the Materiel Distribution Center, Somerville, NJ, to Illinois Lock Company (Illinois Lock) for two types of locks, PS Items 0910A and 0910B. Hudson complains that Illinois Lock will receive an unfair advantage by supplying a foreign product and also asserts that the product offered by Illinois Lock does not meet the requirements of the solicitation.

Bid opening was January 19, and three bids were received, of which Illinois Lock's was the lowest. Illinois Lock's bid indicated that the locks which would be furnished would be manufactured in Taiwan. Accordingly, a six percent evaluation factor was applied to Illinois Lock's bid price pursuant to the solicitation's Buy American clause. As so evaluated, Illinois Lock's bid remained lower than the second low bid of Hudson. The contracting officer is currently reviewing the pre-award information submitted by Illinois Lock, which is the current contractor for the same items under Contract No. 337100-88-V-0328.

In its protest, Hudson asserts that since Illinois Lock is supplying a foreign product, it will receive an unfair financial advantage because it is relieved of responsibilities and costs related to certain specified employment practices with which domestic firms must comply. Hudson also alleges that Illinois Lock's product does not comply with the specifications, citing its use of unspecified materials, non-conformance with the key non-interchangeability requirement, and non-compliance with quality assurance and inspection procedures and with shipping and handling requirements.

In his report, the contracting officer contends that Hudson's protest is without merit, stating that it is premature. With respect to the foreign product issue, the contracting officer contends that he properly followed all applicable procurement regulations. He states that there have been no rejections of items submitted by Illinois Lock under the current contract.

Discussion

Hudson's objection to the proposed provision of foreign locks is unavailing. Such goods are not proscribed by the solicitation. The regulations applicable to this procurement provide (at Postal Contracting Manual 1-1800 et. seq.) for a six percent preference for domestic source end products over end products of foreign manufacture.

As we recently noted: "We do not understand this factor to represent a thorough attempt to equalize costs between foreign and domestic competitors, but rather to express a policy determination that domestic firms are to be given a preference in the amount of the factor." Riddle Corporation, P.S. Protest No. 89-16, March 13, 1989; See also Spacemakers, Inc., P.S. Protest No. 75-32, June 20, 1975. The factor was correctly applied in this case.^{1/}

Hudson's protest of Illinois Lock's responsibility is premature. The contracting officer has not completed his responsibility determination pursuant to PCM 1-902.^{1/} A speculative protest which anticipates agency action is premature and will not be considered, Kahn Industries, Inc., P.S. Protest No. 85-56, August 26, 1985, citing Ameritex Enterprises, Ltd., Comp. Gen. Dec. B-217456, 85-1 CPD & 161, February 7, 1985. Accordingly, this aspect of the protest is dismissed.

The protest is denied in part and dismissed in part.

[checked against original JLS 5/4/93]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

^{1/}To the extent that the protester objects to the terms of the solicitation, i.e., that Postal Service policy of adding a 6% factor to the bids of those offering a foreign product is insufficient, the protest is untimely. "[P]rotests based upon alleged deficiencies in a solicitation which are apparent before the date set for the receipt of offers must be received by the date and time set for the receipt of offers." PCM 2-407.8 (d); see Triad Building Maintenance Co., P.S. Protest No. 88-11, February 17, 1988; Alta Construction Company, P.S. Protest No. 86-43, June 20, 1986. We are without jurisdiction to review an untimely protest. Amerijet International, Inc., P.S. Protest No. 87-45, September 2, 1987.

^{2/}The contracting officer notes in his report that he will investigate the allegations set forth by Hudson in its protest.