



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Texstar, Inc.

File: B-275961; B-275980

Date: April 22, 1997

Gretchen A. Benolken, Esq., Fogle & Benolken, for the protester.
Michael A. Nemeroff, Esq., Sidley & Austin, for Sierracin/Sylmar, an intervenor.
Marian Sullivan, Esq., Department of the Air Force, for the agency.
Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Multiple awardee on two solicitations for aircraft windshields is not entitled to award for entire requirement under each contract by virtue of its status as a Blue Ribbon Contractor (BRC), where each solicitation provided for two awards and solicitations' BRC provisions were not intended to entitle any one offeror to more than one of the two windshield awards under each solicitation.

DECISION

Texstar, Inc., an awardee under both Department of the Air Force request for proposals (RFP) Nos. F41608-96-R-56510 and F41608-96-R-56511, for right- and left-sided A-37/T-37 aircraft windshields, protests the award of contracts to Sierracin/Sylmar (Sierracin) under the same solicitations.

We deny the protests.

Both RFPs solicited prices for initial definite and incremental indefinite quantities, and for government-furnished tooling and contractor-manufactured tooling. Further, both RFPs provided for "multiple awards for sustaining multiple sources"; two contracts would be awarded, consisting of "award of 50 percent of the initial order quantity . . . to each one of the two lowest evaluated offerors" and award of subsequent delivery orders based on a best value determination.¹ The evaluation for

¹In this regard, the RFPs specifically provided that "[t]he purpose of this contractual vehicle is to allow for the independent manufacture of the subject items in order to help maintain presently qualified sources and to possibly assist in expanding the industrial base with new manufactured tooling as required." Amendment No. 0002

(continued...)

the windshields was to be based on a total price developed by multiplying the best estimated quantity (BEQ) for each line item by a weighted average unit price offered for all increments.

Additionally, the RFPs provided that "[i]dentification of the lowest and next lowest evaluated offerors" would be "subject to" the provisions of the Air Force Materiel Command's (AFMC) Blue Ribbon Contractor (BRC) program. See AFMC Federal Acquisition Regulation Supplement (AFMCFARS) Part 5315.605-90. This program, which applies to spare parts acquisitions, recognizes that among responsible contractors "varying degrees of quality and delivery performance exist and that award to the lowest evaluated price offeror is not always in the best interest of the government." Id. When the BRC preference is used, an agency may select the BRC offeror over a lower-priced, non-BRC offeror after considering the price differential. Id.

The agency received two offers--from Texstar and Sierracin--under each RFP. Once the agency determined both proposals were acceptable, it awarded each firm contracts under both solicitations; Texstar's evaluated contract price for the windshields was [deleted] and Sierracin's \$1,085,088. In addition, under line item No. 0004 in both RFPs, for contractor-furnished tooling, the agency made award to Sierracin based on its low price of \$45,660; Texstar offered [deleted].²

Texstar argues that the evaluation of Sierracin's proposals was defective, and that the windshield awards to Sierracin at prices higher than the protester's were not in the government's best interest. In particular, the protester contends that it should have been awarded the Sierracin contracts based on its status as a BRC.

Texstar's status as a BRC did not entitle it to award for the entire requirement under each contract. While the BRC provisions in the RFPs refer to one award and award to the lowest-priced BRC offeror if low overall, they do not purport to override the RFPs' multiple award provisions; indeed, the agency's intention to make two awards under each RFP was reiterated in amendment No. 0002. Reading the RFPs as a whole, then, we think it is clear that, while the BRC provisions could be applied in determining which offeror was entitled to each of the two awards

¹(...continued)

reiterated that "only 50 percent of the initial order quantity will be awarded to each successful offeror."

²The agency made no award for government-furnished tooling, line items No. 0003. Apparently, the government-furnished tooling listed in the solicitation was not actually necessary for production of the windshields.

under each RFP,³ those provisions were not intended to entitle any one offeror to more than one of the two windshield awards under each RFP.

Texstar further contends that the agency improperly made a single award of the contractor-furnished tooling item to Sierracin, since it believed the agency would purchase two sets of tooling (one under each contract). While it was not clear from the RFPs that a single set of tooling would be purchased based on low price, a June 10, 1996 letter from the agency to Texstar stated that a "[not separately priced] proposal from Texstar on CLIN [No.] 0004 would not permit competitive evaluation and would most likely be determined to be non-responsive," and that it therefore "would be appropriate for Texstar to offer a price to produce a complete set of duplicate tooling." It should have been clear to Texstar from this correspondence that the agency would not automatically purchase contractor tooling as part of the windshield requirement (the RFPs nowhere indicated that this was the agency's intent) but, rather, would conduct a "competitive evaluation" of the prices offered. This is what the agency did. In any case, we fail to see how Texstar was competitively prejudiced; since prices were submitted under the threat of competition, there is no reason to believe--indeed, Texstar does not even argue--that Texstar would have structured or priced its proposal differently, to its competitive advantage, had it been aware that only a single set of tooling would be purchased. Lithos Restoration, Ltd., 71 Comp. Gen. 367, 371 (1992), 92-1 CPD ¶ 379, at 5 (prejudice is an essential element of a viable protest).

The protests are denied.

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³Neither the RFP language nor the underlying regulations require an award under the BRC program; they merely permit it. See Hi-Shear Tech. Corp.--Recon., B-261206.2, Feb. 12, 1996, 96-1 CPD ¶ 63, at 2.