



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: McCombs Fleet Services

File: B-278330

Date: January 16, 1998

Tenley A. Carp, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.
Michael D. Tully, Esq., General Services Administration, for the agency.
Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that offerors were treated unequally to the detriment of the protester is denied where the allegation stems from the protester's having been appropriately cautioned by the contracting officer about the requirement for independent pricing, in response to an open-ended question about the possibility of making an unspecified arrangement under which one individual would sign separate offers for product lines of three competing truck manufacturers, while other offerors submitted successful proposals that the protester incorrectly believes should have been understood to evidence a violation of the requirement for independent pricing.

DECISION

McCombs Fleet Services protests contract awards to Johnsons of Kingfisher and Carter Chevrolet Agency, Inc., under request for proposals (RFP) No. FCAP-FM-CCWTB-8-14-97, issued by the General Services Administration (GSA) for light truck assemblies consisting of cabs and chassis made by Ford Motor Company, the Chrysler Corporation, and General Motors Corporation (GM), and bodies fabricated to meet the government's specifications. The crux of the protest is that offerors were treated unequally to the detriment of McCombs.

We deny the protest.

BACKGROUND

The RFP, issued on June 15, 1997, with a closing date of August 14, contemplated award on the basis of evaluated low price of indefinite delivery/indefinite quantity contracts for various line items representing different truck configurations. Separate contracts were to be awarded under each line item for Chrysler, Ford, and GM products.

Johnsons offered Dodge trucks (which are Chrysler products); Carter offered GM trucks; and McCombs offered GM trucks for certain line items and Ford trucks for others. Johnsons was awarded a contract for Dodge trucks with an estimated value of \$13.4 million; Carter was awarded a contract for GM trucks with an estimated value of \$31.2 million; and the protester was awarded a contract for Ford and GM trucks with an estimated value of \$16.8 million.

PROTEST

The protester's allegation of unequal treatment arises from a telephone conversation between the firm's government contracts representative and the contracting officer, which McCombs initiated in early August, prior to the closing date for receipt of initial proposals. In its initial protest submission, McCombs maintained that, in response to its question as to whether the firm could submit three separate proposals for Ford, Dodge and GM trucks, the advice given by the contracting officer was "no" because of the way she cautioned about the requirement for independent pricing. McCombs took the position that this advice precluded the firm from offering Dodge products because it did not own a Dodge dealership. In contrast, according to McCombs, Johnsons and Carter were permitted to enter into an arrangement whereby Carter--which does not own a Dodge dealership--prepared both offers and profited by Johnsons's offer of Dodge products because Johnsons proposed to use a fabrication subcontractor owned by Carter. The protester also asserts that this arrangement enabled Carter to reduce its prices for GM products. In McCombs's view, the awards to these offerors represented unequal treatment because the contracting officer's advice had effectively prevented McCombs from similarly "profiting" by entering into some sort of unspecified arrangement with a Dodge dealer.

As explained below, the contracting officer's advice to McCombs was not inappropriate and there was no unequal treatment, because the record does not support McCombs's speculation that the other two offerors were permitted to enter into a relationship which violated the requirement for independent pricing.

ANALYSIS

The August Conversation

Because of the parties' dispute about what was said during the early August conversation, our Office conducted a telephonic hearing at which the two participants testified concerning their recollection of the conversation.¹

¹McCombs's representative admitted that his recollection of whether there were one of two conversations was vague. In contrast, the contracting officer clearly testified (continued...)

McCombs's representative testified that he asked two questions; the contracting officer states that only one question was asked. Both witnesses agree that the contracting officer was asked whether the McCombs representative could sign and submit three separate proposals, one each for Dodge, Ford, and GM products.² Both witnesses agree that the contracting officer responded by cautioning McCombs's representative that separate offers had to be independently priced, but that he could submit one proposal covering all three manufacturers' vehicles.

McCombs's representative testified that he also asked a second question concerning whether he could assist another dealer (*i.e.*, a Dodge dealer) in the preparation of a "separate solicitation [*i.e.*, offer]," possibly through a "joint effort," in response to which he received the same caution about the requirement for independent pricing. The contracting officer denies that this question was asked.³

Whether one question was asked or two, McCombs's representative testified that, based on the contracting officer's cautionary advice, he concluded, without further discussion on the topic with the contracting officer, that the independent pricing requirement would preclude the firm from offering Dodge products because McCombs had no ownership interest in a Dodge dealership. While the McCombs representative testified that he believes that the independent pricing requirement precludes the joint preparation of an offer for Dodge products with an entity in which McCombs did not have an ownership interest, without consideration of whether this entity was a competing offeror, he also testified that this belief was never discussed with the contracting officer. In our view, there having been no discussion as to whether or not the three proposals would be submitted by three offerors in competition with one another, the caution given by the contracting officer appears to be an appropriate response. While McCombs's representative apparently believes that he communicated his concerns about McCombs's lack of a Dodge franchise ownership to the contracting officer, there is nothing in his direct

¹(...continued)

that there was only one conversation and, in its post-hearing comments, McCombs effectively concedes that there was only one conversation.

²There is some confusion in the record about whether this question involved Dodge or Chrysler vehicles. This confusion may have arisen because Dodge vehicles are manufactured by Chrysler Corporation.

³Whether or not the question was asked, the caution allegedly provided would appear to have been appropriate in response to such a question because, as McCombs's representative himself testified, he never provided any details of a proposed relationship with a Dodge dealer to the contracting officer, and the question appears to suggest the preparation by one competitor of another competitor's offer.

testimony to support the belief that this information was conveyed, and the contracting officer denies that this matter was mentioned at all.

In sum, the McCombs's representative's question or questions amount to blanket requests of the contracting officer to approve unspecified manners of offering, which appear to present possible issues about competing offerors sharing price information and, with the admitted lack of any explanatory information, the contracting officer responded appropriately.

The Johnsons/Carter "Arrangement"

As indicated above, McCombs asserts that Johnsons and Carter were permitted by the agency to enter into improper arrangement whereby Carter prepared the Johnsons offer and profited by that offer for Dodge trucks, which were to be worked on by a subcontractor owned by Carter.⁴ McCombs further asserts that the agency should have been aware of this relationship and should have considered that the offers represented a violation of the independent pricing requirement.

In support of its allegation, the protester notes that the two firms have a common fabrication subcontractor allegedly owned by Carter, both firms proposed the same individual for the position of "Contact for Contract Administration," and the competing proposals used the same abbreviations in the address for that position. In this last regard, the protester notes that "W." is used for "West" in each proposal, "Ave." is used for "Avenue" and "OK" is used for "Oklahoma." McCombs believes that this information somehow establishes that Carter prepared Johnsons's offer.

The purpose of the requirement for independent pricing is to ensure that offerors do not collude among themselves to set prices or restrict competition by inducing others not to submit offers. Ace Reforestation, Inc., 65 Comp. Gen. 151, 152 (1985), 85-2 CPD ¶704 at 2-3. The requirement for independent pricing does not preclude competitors from proposing the same subcontractors. Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83 at 2-3. Further, the fact that two offerors have common offices, ownership, or business addresses is not by itself sufficient to establish a violation of the requirement and where, as here, a protester presents no other evidence showing that competitors did not arrive at their prices independently, we will not assume otherwise. Ace Reforestation, Inc., supra.

⁴In its protest submissions, McCombs takes the somewhat anomalous position that the relationship between the two other awardees is improper, while simultaneously suggesting that it is essentially the same type of arrangement that the protester sought permission to enter into with a Dodge dealership in order to prepare a proposal.

McCombs simply draws unsupported inferences from the proposals. Neither the existence of common subcontractor ownership nor the proposals to use common subcontractors warrant a conclusion that the offers were not independently prepared. Nor, in our view, does the common use of standard abbreviations in the addresses listed by each offeror. The record indicates that the offers were prepared on separate dates in two different handwriting styles and signed by two different individuals, each authorized to represent his firm.

In short, there is nothing in the record to support the speculation that Carter prepared the Johnson offer; the structure of the proposals provides no basis to cause the contracting officer to conclude that the two offerors somehow colluded or otherwise improperly collaborated in preparing their proposals.

CONCLUSION

The protester's premise that it was unfairly treated because the agency would not permit it to enter into an arrangement whereby it could offer Dodge trucks, while Johnsons and Carter were permitted to enter into such an arrangement, is simply not consistent with the record. McCombs was given appropriate general advice and never described the nature of the arrangement it was apparently contemplating; Carter and Johnsons, on the other hand, were properly awarded contracts because nothing in their proposals raised a question about the propriety of the firms' actions.

The protest is denied.

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