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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Glenn Defense Marine-Asia PTE, Ltd.

File: B-403778

Date: November 24, 2010

David S. Black, Esq., Jacob W. Scott, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.

Mark W. Golden, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency determination to make multiple awards is unobjectionable where solicitation incorporated by reference the Federal Acquisition Regulation provision reserving the government's right to make multiple awards and multiple awards would result in a lower total price to the government.

DECISION

Glenn Defense Marine-Asia PTE, Ltd., of Singapore, protests the award of a contract to Global Ship Management & Marine Services, Inc., under request for proposals (RFP) No. N40345-10-R-0077, issued by the Department of the Navy, Navy Fleet and Industrial Supply Center Detachment Singapore, for husbanding services for four lots in the Philippines. The protester argues that the agency's decision to make split awards is inconsistent with the solicitation because the solicitation expresses a clear intent to make a single award for all lots.

We deny the protest.

BACKGROUND

The RFP was issued on May 6, 2010, and contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a 12-month period with an option period of 6 months. RFP at 3. The RFP was for the following four lots in the Philippines:

Lot 1 - Manila
Lot 2 - Subic Bay
Lot 3 – Puerto Princesa
Lot 4 - Cebu

RFP at 9. The RFP provided that award would be made to the responsible offeror who submitted the lowest-priced, technically acceptable offer with acceptable or neutral past performance. RFP at 115. The RFP included the following clause required by the Naval Supply Systems Command (NAVSUP):

Single Award For All Items (JAN 1999)(NAVSUP): Due to the interrelationship of supplies and/or services to be provided hereunder, the Government reserves the right to make a single award to the offeror whose offer is considered in the best interest of the Government, price and other factors considered. Therefore, offerors proposing less than the entire requirement may be determined to be unacceptable.

RFP at 116.

In addition, the RFP incorporated by reference the provision of Federal Acquisition Regulation (FAR) § 52.212-1, “Instructions to Offerors--Commercial Items,” which includes the following notification:

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

RFP at 31.

The agency initially received three proposals, including proposals from Glenn and Global. However, because the estimated number of ships increased after receipt of proposals, a revised RFP was issued on July 28 and three proposals, including proposals from Glenn and Global, were received by the August 5 closing date. Agency Report (AR), Tab 5, Business Clearance Memo, at 5. After the technical evaluation, all three proposals were rated technically acceptable. Id. at 6. All three proposals were also rated acceptable for the past performance evaluation factor. Id. at 11.

The agency then compared proposed prices, determined that adequate price competition existed and concluded that all prices were reasonable. Id. at 12. As is relevant here, a comparison of proposed prices was as follows:

	Glenn	Global
Lot 1 – Manila	\$212,670.05	\$181,198.50 ¹
Lot 2 – Subic Bay	\$457,357.95	\$378,287.15
Lot 3 – Puerto Princesa	\$62,258.80	\$122,813.66
Lot 4 – Cebu	\$56,601.20	\$117,869.56
Total	\$788,888.00	\$807,169.87

Id. at 12.

After reviewing the pricing for each lot, the contracting officer considered the possibility of making split awards, with one contract for lots 1 and 2 and another contract for lots 3 and 4. As is relevant here, the results of that evaluation are as follows:

	Glenn	Global
Lot 1 – Manila	\$212,670.05	\$181,198.50
Lot 2 – Subic Bay	\$457,357.95	\$378,287.15
Total	\$670,028.00	\$559,485.65

	Glenn	Global
Lot 3 – Puerto Princesa	\$62,258.80	\$122,813.66
Lot 4 – Cebu	\$56,601.20	\$117,869.56
Total	\$118,860.00	\$240,683.22

Id. at 13.

The contracting officer recognized that Glenn submitted the lowest overall price but considered the cost savings of making a split award and determined that it was in the government’s best interest to award two contracts: an award for lots 1 and 2 to Global; and award for lots 3 and 4 to Glenn. Id. at 14. The contracting officer states that prior to deciding to make multiple awards, he considered several factors. He noted that the RFP incorporated the clause at FAR § 52.212-1, “Instructions to Offeror-Commercial Items,” and its subparagraph (h) concerning multiple awards. Contracting Officer’s Statement at 2. He also noted that none of the offerors had qualified their offers to limit the government from accepting less than the entirety of their offer. Id. at 2-3. He further concluded, that although the RFP contained the

¹ The price that Global actually proposed for Lot 1 was \$188,199.50. Contracting Officer’s Statement at 3.

NAVSUP provision reserving the right to make a single award for all items, the supplies and services here were not so interrelated as to preclude multiple awards. Id. at 1-2. The contracting officer determined that a split award would reduce the overall contract price to the government by \$110,542.44. (After considering Global's correct price for Lot 1, the savings is \$103,541.35.) Id. at 1-3. The contracting officer therefore recommended a split award to Glenn and Global, and the source selection authority agreed.

On August 27, a contract for Lots 1 and 2 was awarded to Global and a contract for Lots 2 and 3 was awarded to Glenn. After receiving notification of award, Glenn filed this protest with our Office on September 3.

DISCUSSION

The protester argues that the solicitation expresses a clear intent to make a single award for all lots and does not provide for split awards. Thus, in the protester's view, the agency improperly deviated from the award criteria when it made a split award for Lots 1 and 2 to Global. Protest at 7.

The agency responds that its decision to make multiple awards was reasonable and consistent with the terms of the RFP. The agency first distinguishes between reserving the right to make a single award and promising to do so. Legal Memo at 7. The agency also contends that the RFP's inclusion of the multiple awards provision of FAR § 52.212-1(h) placed offerors on notice that the contracting officer might make multiple awards. The agency further notes that the RFP was structured so that offerors provided prices by lot and also provided a consolidated price. Id. at 6.

We agree with the agency's interpretation of its solicitation. Here, as explained above, the RFP incorporated the multiple awards provision of FAR § 52.212-1(h), which provides that the government could accept any item or group of items of an offer unless the offeror qualifies the offer by specific limitation.² We have held that this language is sufficient to indicate that multiple awards may be made where the award clause does not specifically require an aggregate award. HFS, Inc., B-246018, Feb. 7, 1992, 92-1 CPD ¶ 160 at 3.

Moreover, our Office consistently has required award on the basis of the most favorable overall cost to the government where multiple awards are permitted by the solicitation and would result in the lowest cost to the government. Id. We also note that the protester does not argue that it would have priced its proposal differently if

² To the extent that these provisions are inconsistent or ambiguous, any protest concerning the alleged improprieties in the solicitation should have been filed prior to the time set for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2010).

it knew that the agency contemplated making multiple awards. Thus, we have no reason to question the agency's award of multiple contracts where the RFP permitted multiple awards, the requirement is clearly severable, and multiple awards will result in lower overall cost to the government.³

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ The protester relies on our decision in International Code Servs., Inc., B-276457, June 16, 1997, 97-1 CPD ¶ 216, to support its position that the issuance of multiple awards violates the terms of the solicitation. However, in that decision, not only did our review of the solicitation suggest that the agency only intended to make an aggregate award, but also the agency specifically advised vendors, in its response to a pre-proposal question, that it would not be making multiple awards. Id. at 4 n.3.