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Mr. Kildee

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202697

DATE: August 11, 1981

MATTER OF: F. J. Washington Fuel Oil Inc.

DIGEST:

1. Protest against displacement of initial low offer after receipt of best and final offers is without merit as economic price adjustment provisions of solicitation permit consideration of price increases occurring during proposal evaluation period up to time of award.
2. Protest alleging that recalculation of low offers pursuant to economic price adjustment provision of solicitation can be used to deliberately eliminate offeror is denied when protester fails to demonstrate that agency made such deliberate attempt to eliminate offeror during proposal evaluation.
3. Agency did not act improperly by withdrawing its referral of protester to Small Business Administration for consideration under Certificate of Competency procedure when agency determined that protester was no longer in line for award as low offeror.

F. J. Washington Fuel Oil Inc. (Washington) protests Defense Logistics Agency's (DLA) rejection of its offer under request for proposals No. DLA600-81-R-0061 to procure a variety of bulk petroleum products for military depots and installations along the East and Gulf coasts.

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The economic price adjustment provisions of the solicitation allowed offerors to tie their proposed contract prices to increases or decreases in a designated industry price posting or index. A counterpart provision advised that such increases and decreases "will be considered in the evaluation of offers up to the time of award." Under the solicitation provisions price escalations are not submitted by the offerors but are calculated by the agency using the agreed to formula in the solicitation. Washington's offer to supply a portion of DLA's requirements for one product was initially evaluated as low after receipt of best and final offers. However, a subsequent recalculation, which took into account price escalation in the interim, resulted in the displacement of Washington's offer.

Washington contends its low offer may not be displaced as a result of price changes which occur after receipt of best and final offers; that DLA's ability to recalculate proposed prices in the interim between receipt of proposals and award could be used to arbitrarily eliminate an offeror; and that DLA's initiation of a Certificate of Competency (COC) review by the Small Business Administration (SBA) precluded rejection of Washington's offer until the review was completed.

Washington's protest against the displacement of its initially low offer is without merit as the economic price adjustment provisions of the solicitation clearly permit the agency to calculate price adjustments up to the time of award. There is no restriction on adjustments after receipt of best and final offers. If Washington objected to this procedure for evaluating prices it should have complained prior to the date set for receipt of proposals. See Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1).

As to Washington's contention that DLA could arbitrarily eliminate an offeror through repeated recalculations of the low offers pursuant to the economic price adjustment provisions of the solicitation, such allegation is speculative at best. The agency explains that the recalculation was made because another offeror's price had been erroneously entered into the computer used to calculate the evaluated prices. There is no evidence that DLA acted to deliberately exclude Washington by manipulating the

evaluation or otherwise. Consequently, Washington has not satisfied the burden of proof necessary to demonstrate that DLA consciously attempted to eliminate Washington from consideration. See Security Assistance Forces & Equipment International Inc., 60 Comp. Gen. 41 (1980), 80-2 CPD 308.

Finally, Washington contends that once DLA requested a COC, it was required to await the SBA's determination before considering another offer for award. No authority has been advanced for this proposition, and we are unaware of any requirements of this nature. There is simply no need for a determination of an offeror's responsibility to perform when that offeror is no longer in line for the award as the low offeror. In a comparable case, an agency eliminated the low offeror as nonresponsible, requested a COC for the second low offeror, and then reinstated the low offeror when additional information disclosed that it was in fact responsible. We did not object to the agency's withdrawal of its COC referral. Henry Spen & Company, Inc., B-183164, January 27, 1976, 76-1 CPD 46. Similarly, we have no basis to object to DLA's withdrawal of its COC referral in the instant case.

The protest is denied.


Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-202697

August 11, 1981

The Honorable Joseph P. Addabbo
House of Representatives

Dear Mr. Addabbo:

We refer to your interest in the protest of F. J. Washington Fuel Oil, Inc., concerning the rejection of its proposal to supply petroleum products under solicitation No. DLA600-81-R-0061 issued by the Defense Logistics Agency.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Rowland".

Acting Comptroller General
of the United States

Enclosure