

117506

20796

DECISION



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

FILE: B-206249

DATE: February 16, 1982

MATTER OF: Milwaukee Valve Company, Inc.

DIGEST:

Protest against a notice in a competitive solicitation advising that the contracting agency has an option to purchase some of its requirements under an existing contract at a net unit price of \$859.95 and reserves the right to exercise that option and to award the rest of its requirement under the solicitation if the lowest evaluated bid price exceeds the option price, is summarily denied. The protester's initial submission shows that the protest is without merit because Defense Acquisition Regulation § 1-1505(c) and (d) expressly permits the use of a competitive solicitation to test the market in order to determine whether exercising an option is the most advantageous method of fulfilling the agency's needs.

Milwaukee Valve Company, Inc. (MVC), protests the inclusion of a notice of an option in invitation for bids (IFB) No. DLA700-82-B-0763 issued by the Defense Logistics Agency, Defense Construction Supply Center, Columbus, Ohio (DLA), for 302 bronze gate valves. The notice advises prospective bidders that DLA has an option to purchase 114 valves under contract No. DLA700-82-C-0345 at a net price of \$859.95 each and that DLA reserves the right to exercise the option and to award the remaining 188 valves under the IFB if the lowest evaluated bid price exceeds the option price.

The protester contends that the notice specifies the maximum price acceptable to the agency, contrary to Defense Acquisition Regulation (DAR) § 3.805.3(c) (1976 ed.), which prohibits the use of auction techniques in conducting negotiated procurements. MVC asserts that this prohibition must also apply to formally advertised procurements. In addition, the

protester states that the notice discloses confidential procurement information and undermines the integrity of the competitive bidding process. MVC asks that bid opening be postponed pending resolution of its protest.

We find that the protester's initial submission demonstrates that the protest is without legal merit.

In deciding whether to exercise an option, the contracting agency is required to determine, among other things, that to do so is the most advantageous method of fulfilling its needs. DAR § 1-1505(c)(iii) (Defense Procurement Circular (DPC) No. 76-6, January 31, 1977). That determination may be made on the basis of a competitive solicitation issued to test the market. DAR § 1-1505(d)(1) (DPC No. 76-6, January 31, 1977). We have held that because the regulation expressly permits the contracting agency to test the market in this manner, there is nothing improper in its doing so. McCotter Motors, Inc., B-194708, May 23, 1979, 79-2 CPD 114; see also A.C. Electronics Inc., B-185553, May 3, 1976, 76-1 CPD 295.

Because the option price and quantity constitute bid evaluation factors which DLA will consider in making an award under the solicitation, they must be included in the IFB in order to ensure competition on an equal basis known to the bidders. See AM International, Inc., AM Micrographics Division, B-203497, August 24, 1981, 81-2 CPD 170.

To the extent MVC refers to the net unit contract price as confidential data, it could not be deemed proprietary if it was submitted in response to a formally advertised procurement. Computer Network Corporation, 55 Comp. Gen. 445 (1975), 75-2 CPD 297. At any rate, we have been advised that the DLA contract in question is with a firm that is a dealer for MVC products. Consequently, the alleged rights it asserts are those of the dealer rather than MVC. MVC's protest on this ground is therefore inappropriate for our consideration because it concerns a matter for resolution under the contract or between private parties. See Ultraviolet Purification Systems, Inc., 55 Comp. Gen. 1272 (1976), 76-2 CPD 46.

Because it is clear from MVC's initial submission that the allegations made are without merit and inappropriate for our review, we deny the protest in part and dismiss it in part without requesting a report from the contracting agency, Technical Food Services, Inc., B-203742.2, September 15, 1981, 81-2 CPD 219.

for 
Comptroller General
of the United States