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

FILE: B-205059 DATE: May 25, 1982

MATTER OF: Rack and Stanley

DIGEST:

1. Where Federal Supply Schedule (FSS) contractor had all but one of the items required by the contracting agency on its FSS contract and the missing item was not of major importance or its price a significant portion of the contractor's overall price, the contractor had, in effect, 100-percent FSS coverage and should have received the award. However, in view of the contracting officer's good-faith determination to award the order to another FSS contractor and the fact that the delivery order has already been filled, no corrective action is recommended.

2. Protester's claim of greater FSS coverage than awardee under second solicitation is incorrect. Although protester had required accessory item on its FSS contract, item is not considered part of mandatory Federal Supply Schedule. Therefore, protester and awardee had identical FSS coverage, and award was properly made to awardee as contractor with lowest aggregate price for FSS items and one open market item.

Stanley-Vidmar, Inc. (Stanley), protests the award of Delivery Order Nos. DAKF03-81-F-C969 ("C969") and DAKF03-81-F-E228 ("E228") to Rack Engineering Company (Rack) under Federal Supply Schedule (FSS) contract No. GS-00S-20179. The orders were for storage cabinets and were issued by the Department of the Army (Army), Fort Ord, California.

We find no basis to disturb the awards made in this instance.

Delivery Order C969 was for two sets of "modular high density storage" cabinets, each set consisting of several individual items to be of the same manufacture. At the time the Army determined it needed this requirement, new, multiple-award FSS contracts had just been awarded to Stanley, Rack and Lista International. Since none of the three had available at that time its FSS catalog and price list, the contracting officer decided that the most efficient way of obtaining prices was to issue a request for quotations.

All three contractors responded, and Lista International offered the lowest aggregate price. The Army, however, found Lista International's cabinets to be too small. It therefore decided to purchase the equipment from the next low offeror, Rack, at a total price of $16,919.62. Of the items needed, Rack was missing two from its FSS contract (stack top and labels) and Stanley was missing one (labels). Both contractors, however, quoted prices for all required items.

According to the Army, the contracting officer was unaware that Rack did not have all the required items on its schedule. This was due--as indicated above--to the fact that FSS catalog and price lists were not available at the time the contracting officer was evaluating the quotations. Therefore, when the contracting officer made the award to Rack, she did so under the belief that Rack was not only the low offeror, but also had 100-percent FSS coverage.

In view of the contracting officer's good-faith determination and also the fact that the delivery order has already been filled, we make no recommendation for corrective acton. However, we wish to point out that, if the contracting officer had been aware of all the facts at the time of her evaluation, Rack should not have been automatically considered for the award.

In Stanley and Rack, B-204565, March 9, 1982, 82-1 CPD 217, we found that there is no regulation or case which requires that award must be made to the contractor with the greatest FSS coverage where FSS and non-FSS items are combined in a single procurement. In such a situation, the contracting agency may properly make the award to the company offering the lowest aggregate price. However, the present case can be distinguished from Stanley and Rack. Stanley's only missing item was "labels," which Stanley had listed as $14.08 out of a total price of $17,751.57. Since this item was not of major importance or its price a significant portion of the overall price, the general rule of Stanley and Rack is not applicable. Stanley, in effect, had 100-percent FSS coverage and should have been given the award unless the Army was able to obtain a waiver from the General Services Administration (GSA). Without such a waiver, the Army had no basis for making the award to Rack.

Delivery Order E228 was for 81 sets of a "modular high density storage system" which would be stored on the back of trucks. Because these cabinets would be subjected to a certain amount of rough treatment, the Army also needed "shock bars" furnished along with the other components. Stanley's FSS coverage included the shock bar. Rack's coverage, however, included everything except the shock bar. The Army found that it could purchase the entire requirement from Stanley's contract for $71,105.85. In contrast, the Army was required to request a separate unit price from Rack for the shock bar. Rack quoted a price of $105.98 per shock bar, making its total price (FSS items plus the required number of shock bars) $67,227.59.

The Army contracting personnel were apparently confused over how they should go about making the award. The contracting officer, therefore, requested guidance from GSA. The contracting officer's memo of her conversation with a GSA employee who furnished her guidance reads, as follows:

> "[The employee] stated I could award on low aggregate basis since shock bar was integral part or accessory to cabinet. * * *
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> "[The employee] called on September 29, 1981, and stated his statement * * * was misunderstood and decision for award must be made by the contracting officer."

The Army then decided to treat the shock bar as a nonscheduled, nonmandatory item and to make an award on the basis of low aggregate price--in other words, to Rack--with the shock bar being considered awarded on an open-market basis.

Stanley argues that the shock bar, by the Army's own admission, is an integral part of the cabinet system and, therefore, cannot be considered an "option" in the sense that contractors were free to omit it from their quotations for these orders. Moreover, Stanley argues that the fact that other contractors, such as Rack, did not put the shock bar in their FSS contracts did not make the item a "non-scheduled, non-mandatory item" for a contractor like Stanley who does in fact include that item on its FSS contract. In Stanley's opinion, it has 100-percent FSS coverage and, since the FSS class in question is mandatory on the Department of Defense, the Army had no alternative but to award the contract to Stanley.

The basis for Stanley's claim of 100-percent coverage is the fact that it has the shock bar on its FSS contract--and other FSS contractors, for example, Rack, do not. Stanley appears to argue that, once any contractor offers an accessory item, that item becomes as much a part of a mandatory schedule as those items GSA has specifically required to be priced for inclusion on FSS contracts.

We do not agree. Stanley effectively admits that GSA did not require the inclusion of the shock bar as part of the mandatory schedule to be priced when FSS proposals for these storage cabinets were originally solicited. Consequently, it is irrelevant, in our view, that Stanley included the shock bar as part of its proposal and that, as a result, the shock bar is present in Stanley's FSS contract. Stanley's unilateral action cannot raise the shock bar to the status of a mandatory schedule item when GSA did not consider the shock bar to be mandatory at the time proposals were solicited. Therefore, both Stanley and Rack had identical FSS coverage for the mandatory items: namely, all items except for the shock bar. The Army was then free to treat the shock bar as an open-market item. Under these circumstances, award to Rack as the firm with the low aggregate price was proper.

We sustain the protest in part and deny it in part. But, as indicated above, we find no basis to recommend any corrective action.

Milton J. Socolar

for Comptroller General
of the United States