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

FILE: B-206481 DATE: July 28, 1982

MATTER OF: White Machine Company

DIGEST:

1. An allegation that an agency's inadvertent disclosure of the protester's proprietary information on one procurement gave another bidder an unfair competitive advantage on a subsequent similar procurement is dismissed since the protest does not provide a basis upon which GAO can grant relief.

2. A sole source award is not an appropriate remedy to erase a competitive advantage allegedly given another bidder by an agency's disclosure of proprietary information, where: (1) the agency only inadvertently disclosed the data and did not use it to define its requirements; (2) a sole source award would not place all parties in the same competitive position they occupied prior to the disclosure; and (3) a sole source award would not benefit the competitive procurement process.

White Machine Company protests any award under invitation for bids (IFB) No. DLA004-82-B-0001, issued by the Defense Logistics Agency (DLA) for several automated carousel storage and retrieval systems. White contends it was at a competitive disadvantage under this procurement because some of its proprietary technical data had been disclosed by DLA to E.C. Campbell, Inc., the eventual low bidder, in connection with an earlier procurement. We dismiss the protest.

The technical data in issue had been furnished by White to DLA under step one of a two-step formally advertised procurement for a similar storage and retrieval system (request for technical proposals (RFTP) No. DLA 004-81-T-0001). The data was contained in two August 1981 letters, one from DLA asking White to clarify its proposal, the other from White responding to that request. These letters were considered confidential by DLA but were inadvertently furnished to Campbell as attachments to DLA's administrative report on a protest filed by Campbell in connection with the earlier procurement. Campbell apparently was in possession of this information at least two weeks prior to the February 12, 1982 bid opening for this procurement. Only White and Campbell submitted bids, at $233,300 and $217,080, respectively. Award has been delayed pending our decision here.

The substance of White's protest is that the proprietary technical data disclosed provided Campbell with some insight into White's "procedures for bidding this particular project." White believes this information "must of necessity have influenced the preparation for formulating Campbell's bid," and thus placed Campbell in an unfair competitive position for this procurement. White suggests that to remedy the situation, we should recommend cancellation of the solicitation and procurement of the systems from White on a role source basis.

We find that White's protest does not provide a basis upon which our Office can grant relief. Even if we assume, as White alleges, that the technical data disclosed was in fact proprietary to White and that it somehow gave Campbell insight into White's bidding procedures, the disclosure occurred in connection with an earlier procurement and we are not aware of any appropriate remedy which can be provided for future procurements. In other words, there is no appropriate way that any advantage gained by Campbell can now be eradicated.

White, in support of its suggestion regarding a remedy, refers us to 49 Comp. Gen. 28 (1969). There

we found that the agency had misappropriated the protester's proprietary data by using it to develop its specifications; we recommended that the agency either make a sole source award to the protester, or, if possible, resolicit without using the protester's data. These remedies, however, were not intended to erase a competitive advantage gained by other bidders; indeed, no such advantage was alleged in the case. Rather, our recommendation was necessary to prevent the agency from continuing to violate the protester's proprietary rights, and to place all parties in the same relative competitive positions they occupied before the misappropriation. That is, if the agency required a product which was proprietary to the protester, then the protester was entitled to a sole source award for that product.

Here, DLA did not use White's data to define its needs and in no sense can be said to have misappropriated the data. Thus, the principal purpose of the recommended sole source award--to prevent the agency from violating the protester's proprietary rights--would not be served by a sole source award under the circumstances here. Moreover, since there is no indication that White would have been in line for a sole source award prior to the disclosure, such an award clearly would place White in a more favorable competitive position than it occupied prior to the disclosure. We find no other extraordinary circumstances which would warrant the remedy of a sole source award here. Also, as a practical matter, we fail to see how the procurement process could benefit from curing a possible competitive advantage by doing away with competition altogether.

Therefore, since our Office can not provide an appropriate remedy even if we agreed with White under the circumstances given, we dismiss the protest. Cf. Burnham & Kohutek Associates, Inc., B-202857, June 25, 1981, 81-1 CPD 530.

F. B. Barclay, Jr.

for Harry R. Van Cleve
Acting General Counsel