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

FILE: B-209540 **DATE:** March 21, 1983

MATTER OF: Lou Ana Foods, Inc.

DIGEST:

1. Once offerors are informed of the criteria against which their offers will be evaluated, the agency must adhere to those criteria or inform all offerors of any changes made in the evaluation scheme. Although the agency's actions here were inconsistent with this standard, the protest is denied since the procurement deficiency did not result in competitive prejudice to the protester.

2. Although the solicitation provided that total cost to the Government to land the commodity at the foreign destination would be taken into account in evaluating offers, it also made clear that the countries of destination listed were subject to change. Consequently, the only reasonable interpretation of the solicitation's evaluation and award provisions is that award would be made to that offeror whose landed cost was low for each destination actually chosen for contract award.

Lou Ana Foods, Inc., protests the Department of Agriculture's award of contracts to Cal Western Packaging Corporation and International Filling Co. under announcement KC-SO-3, Invitation 9 for soybean salad oil. We deny the protest.

The solicitation was a total small business set-aside for not to exceed 12,500,000 pounds of oil. It provided that "Ocean freight from port of delivery specified in offer will be taken into consideration in making awards." The announcement also stated that "In addition to price, the following factors will be considered in accepting offer; the total cost to the Government to land the commodity at foreign destination(s) * * *."

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The solicitation set out the intended countries of destination and the approximate quantities of oil to be shipped to each. It also warned that such destinations were provided only as a matter of information and were "subject to change due to modifications in program requirements and for administrative or other reasons." Among the designated countries of destination were Guatemala, El Salvador, the Dominican Republic, and Pakistan; however, no awards were made for those countries under Invitation 9. The quantities for those destinations were subsequently resolicited under Invitation 9A.

Lou Ana contends that contrary to the terms of the solicitation, ocean freight was not taken into consideration when evaluating its offer. The protester notes that had its offer been properly evaluated, its landed cost (price per pound of oil plus ocean freight from port of delivery) would have been low for oil to be shipped to Guatemala and the Dominican Republic. It further notes that its landed cost for those countries would have been lower than the landed cost of the oil which was purchased from Cal Western and International Filling and shipped to certain other countries.

For example, Lou Ana's offered price was $.3253 per pound of oil. The applicable ocean freight from the port of delivery designated in Lou Ana's bid to Guatemala is approximately $.0562, for a total landed cost of $.3815 per pound of oil. This is less than the total landed cost of oil actually purchased from Cal Western and shipped to Lesotho - $.3842 per pound. (Cal Western's offered price was $.3071 per pound of oil; freight from its port of delivery to Lesotho is approximately $.0771.)

Agriculture points out that Lou Ana's price per pound of oil exceeded International Filling's price by more than 9 percent, and Cal Western's price by approximately 6 percent. The agency states that it elected not to accept Lou Ana's offer because it felt Lou Ana should have been more competitive with the other offerors. Agriculture also notes that it awarded a total of 12,169,000 pounds of oil under the solicitation, and that since Lou Ana bid a minimum of 600,000 pounds of oil, it would have been necessary to reduce the amount awarded to one of the other offerors in order to make any award to Lou Ana and stay within the 12,500,000 pound limit set by the solicitation. There is no indication, however, that the landed cost of Lou Ana's oil was given any consideration in making the award decisions.

It thus appears from the agency's report that it rejected Lou Ana's bid solely on the basis of its price for oil without also considering the cost of ocean freight, a factor the solicitation provided would be taken into account in evaluating offers. This was contrary to the fundamental principle that once offerors are informed of the criteria against which their offers will be evaluated, the agency must adhere to those criteria or inform all offerors of any change made in the evaluation scheme. See Umpqua Research Company, B-199014, April 3, 1981, 81-1 CPD 254.

Nevertheless, we cannot conclude that Lou Ana suffered any competitive prejudice in this case. Lou Ana's landed cost was low only for oil to be shipped to Guatemala and the Dominican Republic. Agriculture, however, made no award for oil to be shipped to those countries. Further, for those seventeen countries for which awards were actually made, Lou Ana's landed cost was not low.

By way of example, as noted above, the landed cost of oil purchased from Cal Western and sent to Lesotho was approximately $.3842 per pound. This compares to Lou Ana's landed cost of approximately $.3815 per pound of oil if shipped to Guatemala. Nevertheless, Lou Ana's landed cost for the oil if shipped to Lesotho would have been approximately $.4235 per pound ($.3253 per pound of oil plus $.0982 for ocean freight from Lou Ana's port of delivery).

In that connection, we disagree with the protester's contention that the solicitation required a partial award to it because its landed cost to Guatemala and the Dominican Republic was lower in some instances than Cal Western's and International Filling's landed costs for countries for which awards were actually made. Although the solicitation provided that the total cost to the Government to land the commodity at the foreign destination(s) would be taken into account in evaluating offers, it also made clear that the countries of destination were provided as a matter of information only and were subject to change for administrative or other reasons. Since the Government was not required to make any award for any particular destination included in the solicitation, we believe that the only reasonable interpretation of the solicitation's evaluation and award provisions is that award would be made to that offeror whose landed cost was low for each destination actually chosen for contract award.

We recognize that the procurement approach used by Agriculture allows it to reserve until after bid opening the right to choose the particular combination of countries which will actually be awarded, and that as here, different combinations of countries may result in different low offerors. Nevertheless, this does not render the procurement improper. See H. M. Byars Construction Company, 54 Comp. Gen. 320 (1974), 74-2 CPD 233.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States