

DECISION

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

FILE: B-214538

DATE: July 30, 1984

MATTER OF: Venusa, Ltd.

DIGEST:

Offer for multiple award Federal Supply Schedule contract is properly rejected where past experience shows that sales of offeror's product under previous multiple award schedule contract were not sufficient to warrant retention of firm on contract.

Venusa, Ltd. protests the Veterans Administration's (VA) rejection of its offer under solicitation No. M5-Q50-84. The solicitation called for offers for multiple award Federal Supply Schedule (FSS) contracts to supply various drugs and pharmaceutical products for the period of January 1 to December 31, 1984.

We deny the protest.

The General Services Administration (GSA) normally is responsible for FSS contracts; however, it has delegated authority for the procurement of drugs and chemicals for civilian agencies to the VA. Thus, the VA is responsible for establishing the rules for such procurements and for deciding which firms will receive these contracts.

The VA has determined that it is economically feasible to retain a company on a multiple award schedule contract only if past experience shows a sufficient demand for that company's product. Accordingly, the solicitation provided that "[w]here previous reports of orders received under an item for a manufacturer's product indicate insufficient volume to warrant its continuance, the Government may discontinue its inclusion in the schedule." The VA follows the standard for retention set by the GSA Federal Supply Schedule Contracting Handbook, which at § 8MC-53.109(d) provides that a minimum of \$10,000 in sales under a previous contract is necessary to warrant retention of a firm on a multiple award schedule contract. The protester has not challenged the propriety of this standard and we

believe that this is a reasonable rule for the VA to follow in fulfilling its responsibility for schedule contracts.

The sales reports initially submitted by Venusa with its offer indicated that it did less than \$10,000 in sales of these items to the government under its multiple award schedule contract for the period of January 1 to December 31, 1983. The VA then notified Venusa that it would not receive award due to insufficient sales for that period. Venusa responded that the sales reports submitted were incorrect and subsequently submitted corrected reports which indicated that its sales to the VA totaled \$4,105 and its sales to other government agencies exceeded \$1.3 million. The reports indicated that Venusa's sales to "other government agencies" were made under a different contract with the Defense Personnel Support Center (DPSC), Defense Logistics Agency.

The VA determined that since the sales to DPSC were under a contract other than the multiple award schedule contract, they did not apply to the \$10,000 sales minimum and it informed Venusa of that determination. According to the VA, Venusa agreed that those sales were not under the multiple award schedule contract and that it had done less than \$10,000 in sales under that contract. The agency then concluded that since Venusa had only \$4,105 in sales to the government under the multiple award schedule contract for the previous period, it had insufficient sales to warrant retention.

Venusa acknowledges that it had \$4,105 in sales to the VA, but contends that the Department of Defense (DOD) and the VA share procurements and therefore part of its military sales have gone to VA installations. It argues that consequently it had more than the \$10,000 minimum in sales to the VA.

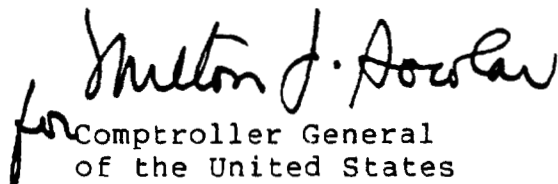
The solicitation defines the scope of this multiple award schedule contract as providing the normal supply requirements of all departments and independent establishments, but it specifically excludes DOD from the mandatory use requirement imposed on other agencies.

Since DPSC is a procuring activity within DOD and consequently is not a mandatory user of this schedule, the burden is on the protester to affirmatively establish that its sales to DPSC were made on the schedule. Venusa, however, has not introduced any evidence to establish that

these sales were made on the schedule; it merely asserts that part of its DPSC sales went to VA installations. Even if this assertion is true, the standard for retention is based on the volume of sales under the previous FSS contract and not on which agency was the ultimate user of the items purchased. On the other hand, the VA introduced the sales reports submitted by Venusa and a report of the conversation it had with the firm to establish that Venusa's sales to government agencies other than the VA have all been to DPSC and that these sales were under a contract other than its multiple award schedule contract. Based on the record, we conclude that Venusa's sales to DPSC were not under the previous multiple award schedule contract and they consequently do not apply to the minimum volume of sales required to warrant retention.

Among the agencies using the VA's multiple award schedule contract for these items in the previous period, only the VA ordered any of Venusa's products and those sales were for only \$4,105. Under the rule followed by the VA for retaining firms on the schedule this is not enough demand among users of the previous contract to justify retention, and consequently the agency acted properly in rejecting Venusa's offer.

The protest is denied.


for Comptroller General
of the United States