

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20546

FILE: B-220646 **DATE:** January 31, 1986
MATTER OF: Eastman Kodak Company

DIGEST:

The General Accounting Office will dismiss a protest by a firm that is the third-low offeror, and thus will not be next in line for award if its protest against award to the low offeror is sustained, when the protester has not contested the acceptability of the second-low offeror.

Eastman Kodak Company protests the award of a contract to Accudyne Corporation under request for proposals (RFP) No. DAAA09-85-R-0604, issued by the United States Army Armament, Munitions and Chemical Command, Rock Island Illinois. Kodak alleges that the Army improperly failed to consider certain indirect cost factors when evaluating Accudyne's offer for a quantity of Multi-Option Fuzes that are a component of the 81MM Mortar. Kodak further contends that the Army should have rejected Accudyne's offer because Accudyne proposed to use a foreign subcontractor to provide certain components of the fuzes.

We dismiss the protest on grounds that Kodak is not an interested party.

The subject solicitation, dated July 11, 1985, was issued for the purpose of establishing a single mobilization base producer for the M734 fuzes. Before the award of this contract, the mobilization base for this item consisted of three contractors, including Kodak, each performing different parts of the fuze manufacture. To facilitate the establishment of this new mobilization base, the solicitation was restricted to domestic and Canadian sources.

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The RFP was for a first article, a "core" production quantity of 265,000 fuzes (line item No. 0001AB), and an additional production quantity of 235,000 (line item No. 0001AC). If funding was not available for a full 500,000 fuzes, the RFP stated, prices offered on a separate schedule for a "supplemental option quantity" of 235,000 fuzes would be evaluated. Moreover, the RFP provided that award was to be made to the lowest evaluated offeror ^{1/} satisfying the technical requirements set forth in the solicitation.

Eight offerors responded to the solicitation. The Army conducted pre-award surveys of the three lowest, Accudyne, Lockheed Electronics, and Kodak, to determine their capability and capacity to perform the contract. During this review, the survey team confirmed that the product proposed by Accudyne would be partially assembled in Taiwan. (Specifically, Accudyne states that its supplier of hybrid amplifier assemblies intends to utilize a third tier subcontractor, located in Taiwan, to assemble most of this component, the parts of which will be procured from American sources.) The survey team determined that this method of manufacture was acceptable because the parts to be assembled in Taiwan are not source controlled; there is an acceptable domestic mobilization base producer for this component; and Accudyne eventually intends to produce the component in-house. The Army awarded the contract to Accudyne on September 27, 1985.

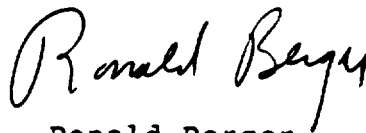
Kodak argues that the Army should have considered (1) the impact of the award and the cost to taxpayers of continuing to support existing mobilization base producers (apparently of the fuze components), since these firms will be idled, and (2) the additional costs including government surveillance, associated with adding a producer that is not currently part of the mobilization base when evaluating Accudyne's offer. Kodak believes that the RFP required estimated costs of these two factors to be considered. Kodak further contends that the Army should have rejected Accudyne's offers because it proposed to use a subcontractor located in Taiwan.

^{1/} The evaluation was based on the f.o.b. origin prices quoted by each offeror. In addition, pursuant to the terms of the solicitation, a transportation factor and a property factor (included to equalize the competitive advantage enjoyed by certain offerors resulting from their rent-free use of government-owned production and research property) were added to these quoted unit prices.

We find that Kodak would not be in line for award even if we sustained its protest on either of these bases. The record shows that for the initial award quantity of 265,000 fuses, the supplemental option quantity of 235,000 fuzes, and the transportation and property factors, Accudyne's total evaluated price on an f.o.b. origin basis was \$25,731,135. This was followed by Lockheed Electronics at \$27,616,040. Kodak was the third-low offeror with a total evaluated price of \$30,030,280.

Kodak has not contested the evaluated price or the acceptability of the second-low offeror, Lockheed. In fact, the record indicates that Lockheed is an existing mobilization base producer for components of fuzes either similar or identical to the ones being procured here. Further, Kodak maintains that only Accudyne proposed to utilize a foreign subcontractor. Therefore, neither of Kodak's allegations would provide a basis for rejecting Lockheed's lower evaluated offer if Accudyne were eliminated from the competition. In these circumstances, Kodak is not an interested party, and we therefore will not consider its protest. Unico, Inc., B-217135, Mar. 8, 1985, 85-1 CPD ¶ 287.

The protest is dismissed, along with Kodak's claim for proposal preparation and bid protest costs.



Ronald Berger
Deputy Associate
General Counsel