

14-1/Ph 2

DECISION



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

FILE: B-221607.2 **DATE:** July 7, 1986

MATTER OF: Action Manufacturing Company

DIGEST:

1. Protest that a single award in a procurement limited to mobilization base producers is contrary to the terms of the solicitation and agency policy is without merit where selection of a single awardee is consistent with the evaluation factors set forth in the solicitation and agency policy prescribes a single award under conditions present in the protested procurement.
2. General Accounting Office denies a protest that a single award in a mobilization base procurement will eliminate competition in future procurements where the protester provides no support for its bare assertion that only active manufacturers will be able to compete effectively for the agency's future requirements.

Action Manufacturing Company protests the award of a contract to Bulova Systems and Instruments Corporation for M567 and M935 fuzes under request for proposals (RFP) No. DAAA09-85-R-1716, issued by the United States Army Armament, Munitions and Chemical Command. Action, which currently produces the fuzes under another contract, contends that under the terms of the solicitation, it should have received a partial award for the fuzes. The firm also alleges that in several respects the procurement was not conducted in accord with applicable statutes and regulations.

We deny the protest.

The RFP, which was issued on November 20, 1985, sought alternative offers for M567 fuzes, M935 fuzes, and the Army's combined requirements for M567 and M935 fuzes (422,258 and 505,312 respectively). Offerors could propose

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prices for delivery on either an f.o.b. destination or f.o.b. origin basis or for both; they could also propose either with or without first article testing. The solicitation provision addressing possible combinations of awards, paragraph M-4, which is central to Action's protest, states as follows:

"This solicitation and the range of quantities and delivery rates proposed are for the purpose of allowing the Government to select a single award, or combination of multiple awards, which will satisfy the current production requirements and at the same time retain one or more suppliers in an active state with capability to accelerate production to a higher production rate at some future date, if required. The Government expects that one or more offerors participating in this competitive procurement action will be unsuccessful and may not receive any award as a result of this solicitation"

The same paragraph reserves the government's right to make that combination of awards determined to be in the best interest of the government, price and other factors considered, and states that:

"Principal among such other factors will be the potential quantitative mobilization production requirement for the supply item involved and the ability of firms selected for award to respond to such potential future demands by the Government for increased production beyond the quantities initially awarded as a result of this solicitation." (Emphasis in original.)

Three companies submitted proposals, including Bulova and Action. The Army concluded that Bulova's offer for all the fuzes, delivered f.o.b. origin and without first article testing, represented the lowest cost to the government. On February 27, the Army awarded a contract to Bulova for the total requirements for both fuzes. This protest followed.

Action contends that a total award to Bulova will reduce the number of firms in the mobilization base, which is allegedly contrary to the purpose of the solicitation and the evaluation factors listed in the RFP.

The firm also alleges that the award will create a single source for future requirements and cause an increase in future prices, in violation of the Competition in Contracting Act of 1984. Pub. 98-369, Part VII. Action also alleges that the agency failed to follow regulatory requirements for negotiated procurements because it did not conduct discussions.

As a preliminary matter, the Army argues that since the RFP alerted offerors to the possibility that only one award might be made, Action should have protested before the date for receipt of initial proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986) (protests based upon alleged solicitation improprieties apparent before the date for receipt of initial proposals must be filed by that date).

We do not view Action's protest as contending that a single award would be improper in every case. Action argues that in light of the particular offerors and prices offered, under applicable statutes, regulations, and policies the agency should have made a multiple award. The protest thus does not relate to a deficiency in the solicitation apparent before the date for receipt of proposals, and it is not untimely.

Reduction of the Mobilization Base

The Competition in Contracting Act of 1984 provides that agencies should "promote the attainment and maintenance of essential capability in the defense industrial base and the capability of the United States for industrial mobilization." 10 U.S.C. § 2301(b)(4) (Supp. II 1984). In furtherance of this policy, agencies may use noncompetitive procedures to award to a particular source or sources in order to maintain availability of property or services in a national emergency or to achieve industrial mobilization. 10 U.S.C. § 2304(c)(3). Pursuant to this authority, the Army limited competition in this procurement to current mobilization base producers, which are "Planned Producers" participating in the Department of Defense (DOD) Industrial Preparedness Production Planning Program. See True Machine Co., B-215885, Jan. 4, 1985, 85-1 CPD ¶ 18.

A firm is not required to be actively manufacturing an item to be a current mobilization base producer. Initially, a firm must have indicated its willingness to produce specified military items in a national emergency by completing a DOD Form 1519, "DOD INDUSTRIAL PREPAREDNESS PROGRAM PRODUCTION PLANNING SCHEDULE." Government production planning officials then survey the facilities in question and

negotiate a production planning schedule that is incorporated in the DOD Form 1519. A firm is considered a mobilization base producer after completion and approval of its DOD Form 1519. Id. In this case, the Army states, there are nine firms with a DOD Form 1519 on file for the fuzes being procured.

In alleging that a single award to Bulova is contrary to the Army's stated desire to maintain the mobilization base, Action confuses the Army's need for mobilization base producers with a need for such producers to be actively manufacturing the fuzes. See National Presto Industries, Inc., B-195679, Dec. 19, 1979, 79-2 CPD ¶ 418 at 6. The RFP states the Army is using its authority to restrict competition in order to retain the availability of the mobilization base. It does not state that the agency plans to keep any particular number of mobilization base producers actively manufacturing fuzes. A single award will not reduce the mobilization base (i.e., the number of firms with a DOD Form 1519 on file), and, consequently, we do not find that a single award is inconsistent with the agency's desire to maintain the current mobilization base.

The protester claims that the RFP evaluation factors effectively require that more than one mobilization base producer be actively manufacturing the fuzes. We disagree. The only factors discussed in the solicitation are price and the capability of the awardee to increase production to meet potential requirements, and the agency's selection was consistent with those factors. The Army's review of Bulova's capacity, incorporated in the firm's DOD Form 1519, showed that the firm could increase production in excess of potential requirements, and Bulova offered the lowest price for the fuzes. Consequently, we deny this ground of Action's protest.

Limitation of Future Competition

The protester claims that an award to Bulova of the total Army requirement will result in only one source for future procurements and higher prices, and that this is contrary to the Competition in Contracting Act of 1984.

The protester does not refer to any particular section of the Act to support its allegation, and we are not aware of one that is clearly applicable in this context. Moreover, the protester has not established the factual premise for the claim, i.e., that unless it is awarded a

contract for at least part of the current requirement, the firm will not be competitive in future procurements. Action simply asserts that once it completes its current contract for producing fuzes, any future purchases "will most likely" have to be from Bulova on a sole-source basis. The protester states that "it is not inconceivable" that it may lose some, if not all, of its "know-how" concerning the manufacture of the fuzes. Action does not provide any information regarding the investment and time necessary to initiate production, the nature of the manufacturing "know how" that may be lost, how many of its current employees are essential for it to compete in the future, or any other evidence in support of its factual assertion.

According to Action, before it entered the market for supply of the fuzes, Bulova enjoyed a monopoly and priced its fuzes higher than it does currently. Yet, the protester provides no information about how it entered the market and why it cannot do so in the future. The protester's bare statements provide no basis for us to find that the Army's failure to make multiple awards in this instance will reduce or eliminate Action's competitive position in future procurements.

Discussions

The protester alleges that the Army violated the Federal Acquisition Regulation (FAR) by not conducting discussions with offerors. The FAR, 48 C.F.R. § 15.610(a)(3) (FAC 84-5, April, 1985), provides that discussions need not be conducted in negotiated procurements where it can be clearly demonstrated from full and open competition or prior cost experience that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the government at a fair and reasonable price. Action has not suggested that Bulova's price is not fair and reasonable, or any other reason why this exception from the general requirement for discussions is not applicable. Consequently, we deny this basis for protest.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel