



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wilkinson Manufacturing Company A2100291

File: B-225280

Date: March 13, 1987

DIGEST

1. Protest contending that the contracting agency improperly allowed only 30 days for bid preparation, thereby preventing protester from competing with the two current contractors, is denied since selection of a bid opening date is within the discretion of the contracting officer and the fact that a firm is not able to prepare a bid within the time allowed does not render the procurement improper.

2. Protest contending that a requirement that deliveries begin 90 days after contract award restricts the competition to the two current contractors who already have the necessary facilities and equipment in place is denied, since an agency is not required to consider, or attempt to eliminate, any competitive advantage that a bidder might have because of its present or past incumbency, unless the advantage results from preferential or unfair action by the government. The record contains no evidence of such action by the government in this case.

DECISION

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Wilkinson Manufacturing Company (WMC) protests any award under invitation for bids (IFB) No. USM 87-08, issued by the Department of the Treasury for bids to provide copper-plated zinc coin blanks for use by the United States Mint in the production of one cent coins. WMC contends that the bid preparation time allowed by the IFB is insufficient to prepare an adequate bid and that the time allowed for delivery of the coin blanks after contract award is so short that no firm other than the two current producers could comply with it. WMC did not submit a bid for this requirement.

We deny the protest.

The IFB called for bids to supply the Denver and Philadelphia mints with penny blanks for the base year and provided for an option to supply a lesser amount for a second year. The IFB

specified a bid opening date 30 days from the date of its issuance and it required that initial deliveries begin 90 days after the contract is awarded. WMC contends that the 30-day period allowed for the preparation of the bids was too short since WMC needed a minimum of 60 days to accumulate the information necessary to prepare a competitive bid. WMC argues that if it were given an adequate time period to submit a bid, the agency would obtain a third qualified producer and the increased competition would save the agency millions of dollars per year.

The agency points out that the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.202-1 (1986), requires a minimum bid preparation time of 30 calendar days and lists such factors as urgency, complexity and anticipated subcontracting as factors that should be considered by the agency to determine if a longer period is needed. The agency insists that these factors were considered before it determined that a 30-day period was adequate for this procurement.

The selection of a bid opening date is within the discretion of the contracting officer, and the fact that a firm is unable to prepare a bid within the time allowed does not render the procurement improper if all firms were treated equally and adequate competition and reasonable prices were obtained. R&E Electronics, Inc. B-223723, Sept. 8, 1986, 86-2 CPD ¶ 273. Moreover, we note that WMC which has bid several times previously on similar procurements has not explained why it needs 60 days to prepare a bid for this procurement.

We find no evidence that anyone was treated unfairly or that reasonable prices were not obtained. The agency has informed us that it issued 17 bid packages and received 2 responsive bids. Under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(1)(A) (Supp. III 1985), however, the agencies are required to obtain full and open competition through the use of competitive procurement procedures. Full and open competition is defined as permitting "all responsible sources" to submit sealed bids or competitive proposals. Id. sections 259(c) and 403(7). Although WMC insists that it should have been permitted to participate, WMC concedes that it could not meet the requirements of this procurement because it did not have the necessary equipment and facilities in place. In our view, therefore, WMC could not be considered as a "responsible source" within the meaning of the CICA requirement and there is no evidence that any "responsible source" was denied an opportunity to compete. The record also indicates that an extension of the bid opening date to 60 days would have been of little help to WMC, unless the

agency was also willing to extend the date for first delivery from 90 days to "a minimum of 12 to 15 months." Under these circumstance, we cannot conclude that the bid preparation period was unreasonable or that WMC was unfairly precluded from submitting a bid.

WMC also contends that the requirement that deliveries begin 90 days after award effectively restricts competition to the two current producers who already have the necessary facilities and equipment to produce the blanks. - WMC states that there is now no competition because one of the current producers receives the portion set aside for small business and the other receives the remainder of the requirement. WMC insists that its efforts to participate in the penny blank program have been futile because it has been "disqualified primarily because of the early delivery date."

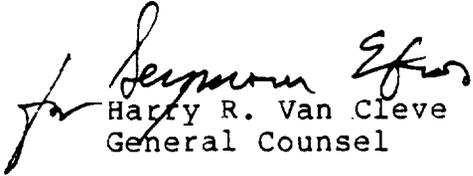
The agency points out that the procurement is subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1982), which requires that the awardee be a manufacturer or a regular dealer and that in order to qualify as a manufacturer, a bidder must be engaged in a business that parallels the processes used in making the penny blanks or demonstrate that it qualifies as a firm newly entering the business in accordance with the criteria set out in the FAR, 48 C.F.R. § 22.606-1(b). The agency contends that bidders who meet this requirement should have no trouble complying with the schedule set for initial deliveries.

Essentially, WMC is challenging the fairness of the competitive advantage enjoyed by the two current contractors and it seeks special treatment from the agency so that it can become a viable competitor to those contractors. We have, however, consistently held that an agency is not required to consider, or to attempt to eliminate, any competitive advantage that a bidder might have because of its present or past incumbency unless that advantage resulted from preferential or unfair action by the government. Universal Alarm Services, B-214022, Mar. 5, 1984, 84-1 CPD ¶ 267. We find no evidence in the record of any such preference or unfair agency action, and we have held that the prior award of contracts based on legitimate minimum needs considerations does not constitute unfair agency action. Rolm Corp., B-214052, Sept. 11, 1984, 84-2 CPD ¶ 280.

Moreover, the record indicates that WMC has bid at least twice previously and did not receive the contract because its prices substantially exceeded those of the awardees. Thus, the agency was never required to determine whether WMC could

have actually performed in accordance with the specifications and WMC was not disqualified because of inability to meet the delivery schedules.

The protest is denied.

for Seymour Egan
Harry R. Van Cleve
General Counsel