



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wire Rope Corporation of America, Inc.

File: B-225672

Date: March 13, 1987

DIGEST

Although the General Accounting Office (GAO) denies on legal grounds a postaward protest against the agency's alleged failure to investigate adequately challenges to the awardee's certifications in its bid concerning its obligation to supply only domestic small business end products in performing the contract, as the protest touches upon issues generally beyond the scope of GAO's Bid Protest Regulations, GAO nevertheless recommends in the face of conflicting evidence that the agency verify the awardee's intent to meet the requirements of the total small business set-aside procurement.

DECISION

Wire Rope Corporation of America, Inc. (WRCA) protests the award of a contract for the supply of various quantities of steel wire rope to Broadway Marine, Inc. under invitation for bids (IFB) No. DTCG25-87-B-10310, issued as a 100 percent small business set-aside by the United States Coast Guard, Department of Transportation. WRCA complains that the Coast Guard has failed to investigate adequately compelling evidence that Broadway Marine will violate the legal requirements of this total small business set-aside in performing its contract.

We deny the protest.

BACKGROUND

The IFB was issued on November 20, 1986, and bids were opened on December 22. Broadway Marine was the low bidder with a bid price of \$424,043.30. Pursuant to the governing requirements of the set-aside, Broadway Marine represented and certified as part of its offer that: (a) it was a small business concern, and (b) that all end items to be furnished under the contract would be manufactured or produced by a domestic small business concern. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219-1 (1985). In this regard, section L-12(c) of the IFB, "NOTICE OF SMALL BUSINESS SET-ASIDE," provides that a manufacturer or regular dealer

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submitting an offer for supplies in its own name thereby agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, or Puerto Rico. FAR, 48 C.F.R. § 52.219-6(c).

Moreover, since the provisions of both the Walsh-Healey Public Contracts Act and the Buy American Act were applicable to the procurement as well, Broadway Marine represented that it was a manufacturer of the supplies offered, FAR, 48 C.F.R. § 52.222-19, and certified that each end product to be supplied was a domestic end product. FAR, 48 C.F.R. § 52.225-1.

Award was made to Broadway Marine on December 31. On January 8, 1987, WRCA filed a protest with the contracting officer alleging that Broadway Marine was a dealer in, and not a manufacturer of, the wire rope to be supplied and that the materials were not domestic in origin. WRCA's principal basis for the allegation was Broadway Marine's low bid price, which WRCA contended was below WRCA's own cost of obtaining domestic materials. Accordingly, WRCA requested that the contracting officer conduct an investigation as to the merit of its allegations.

The contracting officer denied the protest after requesting Broadway Marine to confirm that the wire rope to be furnished would be a domestic end item. Broadway Marine verbally confirmed its original certifications and followed this with a letter to the contracting officer avering that the wire rope was "100% domestic material" and that ". . . we are also manufacturers of said supplies." At this juncture, the contracting officer did not accede to WRCA's request that she obtain from Broadway Marine the identity of the firm's materials supplier. Following the Coast Guard's denial of WRCA's agency-level protest, WRCA then protested to this Office.

PROTEST POSITIONS

WRCA's essential ground of protest is that the agency has not conducted an adequate investigation in the face of compelling evidence that Broadway Marine may have made material misrepresentations in its bid concerning its intent to comply with the governing requirements of the total small business set-aside procurement.

WRCA contends that only three U.S. firms, itself, Paulsen Wire Rope Corporation, and Universal Wire Products, are small business wire rope manufacturers having the capacity to

manufacture wire rope in the types and quantities called for. WRCA asserts that, upon advice from the firms, neither Paulsen (also a bidder under the IFB) nor Universal is supplying Broadway Marine with wire rope for purposes of fulfilling its contract. Accordingly, WRCA argues that these circumstances, and the fact that Broadway Marine's bid price of \$424,043.30 was significantly lower than the bids of those firms deemed ineligible for an award under the set-aside because of their intent to supply foreign-origin wire rope, are clear evidence that Broadway Marine will not honor its commitment to furnish wire rope manufactured or produced by a domestic small business concern.

WRCA also questions Broadway Marine's Walsh-Healey Act certification that it is a manufacturer of the supplies. In this regard, WRCA asserts that the Coast Guard's description of Broadway Marine's manufacturing process, as set forth in the agency's report, casts doubt upon Broadway Marine's status as a manufacturer since it is incompatible with industry trade and usage. Specifically, WRCA contends that although the agency described Broadway Marine's manufacturing procedure as involving the procurement of "raw stranded wire" from its domestic source to be finally processed into steel wire rope, the term "raw stranded wire" is unknown and such a procedure "virtually unprecedented" domestically. Rather, WRCA states that domestic manufacturers "process domestic wire into wire strand and wire rope in one continuous operation."

Thus, WRCA urges that this inaccurate description, as apparently provided to the Coast Guard by Broadway Marine, as well as "industry source" information that Broadway Marine's facility does not have the equipment necessary to produce wire rope, renders implausible the firm's certification of itself as a manufacturer of the product to be furnished under the contract.

The Coast Guard's response is primarily that the issues raised by WRCA are ones traditionally not reviewed by this Office as being outside our regular bid protest function. In any event, the agency asserts that the contracting officer here took all necessary steps to insure that Broadway Marine would comply with contractual requirements. The agency notes that it obtained Broadway Marine's confirmation of its bid certifications in response to WRCA's agency-level protest, and, upon notice of the subsequent protest to this Office, again contacted Broadway Marine. The firm at that point volunteered, as confidential commercial and financial information, the identity of its domestic source for "raw stranded wire." (In turn, at our request, the Coast Guard has furnished that information to our Office.)

To the extent WRCA argues that Broadway Marine's comparatively very low bid price indicates that its product is of foreign origin, the agency points out that the price in fact was only some 3.5 percent lower than the government's own estimate. Moreover, the agency notes that the contracting officer's preaward survey to determine the firm's responsibility as a prospective contractor found Broadway Marine to be financially capable of performing the contract at that price. Hence, the Coast Guard asserts that the contracting officer has made every reasonable effort to assure that Broadway Marine is complying with the total small business set-aside requirements, and, in that regard, "has conclusively determined" that Broadway Marine will supply a domestic end product.

ANALYSIS

It is well-settled that a bid on a small business set-aside must establish the legal obligation of the bidder to furnish supplies manufactured or produced by a domestic small business, generally by the appropriate certification in the bid to that effect; otherwise, the bid is nonresponsive to a material requirement of the set-aside and must be rejected. Stellar Industries, Inc.--Request for Reconsideration, 64 Comp. Gen. 748 (1985), 85-2 CPD ¶ 127. Similarly, the bidder's Buy American Act certification made elsewhere in its bid must not exclude any end products or otherwise indicate that it is offering foreign end products, since, in those circumstances, the government's acceptance of the bid would not result in a contractual obligation to furnish only domestic end products in compliance with the set-aside requirements. See Bender Shipbuilding & Repair Co., Inc., B-219629.2, Oct. 25, 1985, 85-2 CPD ¶ 462.

Although these certifications are usually accepted at face value, this Office has held that an agency should not automatically rely on them when, prior to award, because of inconsistent information brought to its attention, it has reason to question whether a domestic product will in fact be furnished. Towmotor Corp., 65 Comp. Gen. 373 (1986), 86-1 CPD ¶ 219; Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181.

In the present matter, however, it is clear that the contracting officer had no information at hand which was potentially inconsistent with Broadway Marine's bid certifications until after she had awarded the firm the contract. Moreover, since the firm made the appropriate certifications

without qualification in all respects, we see nothing in its bid that would have indicated to the contracting officer that the firm was intending to supply other than a domestic end product. As already noted, given the government's similar estimate for the work, the firm's bid price did not suggest that a foreign item was contemplated. Therefore, WRCA does not have a valid legal ground to protest the award to Broadway Marine on the assertion that the contracting officer failed in her duty to determine that the firm's certifications in its bid were correct. Cf. Towmotor Corp., 65 Comp. Gen. at 377, 86-1 CPD ¶ 219 at 5 (clear evidence before award that domestic source was not a small business concern). Accordingly, since WRCA's protest touches upon postaward matters generally beyond the scope of our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1986), there is no basis upon which we may sustain the protest.

Nevertheless, we believe that sufficient doubt remains as to Broadway Marine's ultimate compliance with its obligation to furnish a domestic end product. In this regard, we note that a computer-generated Dun & Bradstreet report may call into question Broadway Marine's certification of itself as a manufacturer since the firm's business is specifically described as that of a wholesaler having a total of five employees.

Hence, we recommend that the agency verify the correctness of Broadway Marine's certifications that the end item to be furnished under the contract will be manufactured or produced by a domestic small business firm. By separate letter of today, we are so recommending to the Secretary of Transportation despite our denial of the protest. See J.I. Case Co., B-221588 et al., May 5, 1986, 86-1 CPD ¶ 430; cf. Deere & Co., B-224275, Oct. 31, 1986, 86-2 CPD ¶ 504 (no contradictory evidence in the record/sufficient to recommend further investigation by the agency).

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel