



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JG Furniture Systems, Inc.

File: B-230171.34

Date: October 4, 1988

DIGEST

Agency properly rejected offer for Federal Supply Schedule contract where record does not demonstrate that offeror would meet minimum sales requirement set forth in solicitation and agency's determination to reject offer was reasonably based upon past sales records of offeror.

DECISION

JG Furniture Systems, Inc., protests the rejection of its offer submitted in response to request for proposals (RFP) No. FCNO-87-B701-1-26-88, issued by the General Services Administration (GSA) to obtain multiyear, multiple award Federal Supply Schedule (FSS) contracts to supply office furniture systems for the period from October 1, 1988 through September 30, 1991. GSA states that JG's offer was rejected because JG's anticipated future FSS sales to the government were not expected to meet the minimum sales requirements specified for the new contract.

We deny the protest.

GSA has determined that it is economically feasible to retain a company on a multiple-award schedule contract only if its past sales experience indicates sufficient demand for the company's product to warrant the expense of negotiating and administering a contract with it. See Venusa, Ltd., B-214538, July 30, 1984, 84-2 CPD ¶ 124. In previous years, the threshold for retention was \$10,000 per year in anticipated sales. However, GSA subsequently issued a change to its FSS Clause Manual increasing the threshold for

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retaining a contractor to anticipated sales of \$25,000.^{1/} Accordingly, the following clause was included in the present solicitation, issued on December 10, 1987:

"Contract Award Sales Criteria (I-FSS-639-A)
(JAN 1986).

"Normally a contract will not be awarded unless anticipated sales are expected to exceed \$25,000 per year.

"It is the policy of the Government not to contract for a product when the anticipated purchases of the item will be less than \$2,000 for a one year period. Contractors should not offer products which do not meet this criteria."

JG submitted its proposal on January 26, 1988, the closing date for receipt of proposals. On February 8, JG's and numerous other offerors' proposals were rejected by GSA for failure to submit acceptable test data for the products offered as required by the RFP. By amendment No. 4 dated April 14, however, GSA advised the firms that the rejection of their offers was rescinded. Amendment No. 4 extended the deadline for submission of acceptable test data to May 20.

After the issuance of amendment No. 4 on April 14, GSA resumed normal evaluation procedures. In reviewing JG's proposal, GSA found that JG was previously included in an FSS for furniture systems under contract No. GS-00F-94035 for the period from December 8, 1986 through September 30, 1988. GSA ascertained that JG's total sales under that contract as of April 1988 totalled \$10,288. No sales were achieved since July 1987. Based on this history, GSA determined that the government had no basis to anticipate that JG's sales under the present contract would exceed \$25,000. Accordingly, by letter dated May 18, GSA notified JG that its offer would be given no further consideration. This protest followed.

JG first contends that past years' sales should not be the only basis for projecting expected volume, since it has

^{1/} The protester has not challenged this standard and we believe that this is a reasonable rule for the GSA to follow in fulfilling its responsibility for schedule contracts. As GSA states, awarding a schedule contract for items whose anticipated sales are less than the value of one small purchase order is not cost effective and does not represent effective expenditure of public monies.

tested, expanded and improved its product to make it more appealing to GSA and that GSA did not fully consider the experience in engineering and developing proposals and bids that it acquired under the prior FSS and under commercial contracts.

In our opinion, GSA reasonably rejected JG's offer because it did not anticipate that JG would meet the \$25,000 sales requirement. The record clearly shows that JG, under the 21-month period of its prior contract, had sales in only 2 months. In December 1986, JG had sales of \$9,250, and in July 1987, JG had sales of \$1,038, for a total amount of \$10,288. JG argues that "a much expanded and improved product will quadruple our opportunity to win bids." However, as GSA states, even if JG's past sales were quadrupled, JG would still fail to meet the minimum sales criterion (\$10,288 multiplied by four equals \$41,152 in sales over a 21 month period, or less than \$24,000 per year). Moreover, the record shows that the "new and expanded" items offered by JG are merely accessories, adjuncts or component items and that the vast majority of items in JG's offer are contained in JG's prior contract. Additionally, the record also shows that none of the individual products in JG's prior contract resulted in \$2,000 of annual sales, as also required by the solicitation.^{2/} In this regard, GSA states that JG is the only firm out of approximately 30 firms previously under contract that failed to attain the minimum sales. We therefore conclude that the contracting officer exercised reasonable business judgment in determining that JG would not have anticipated sales in excess of \$25,000 per year. See Para Scientific Co., B-225302, Mar. 25, 1987, 87-1 CPD ¶ 340.

While this protest was pending, JG received a letter dated August 4, 1988 from GSA Region 5 Office stating that it intends to place an order which will include approximately \$42,000 in furniture systems under GSA contract No. GS-00F-94035. The letter indicates, however, that GSA Region 5 was unable to obligate funds for the project and that funding has been frozen. Also, GSA indicates that even if an order were approved, half of the items requested by the Region are

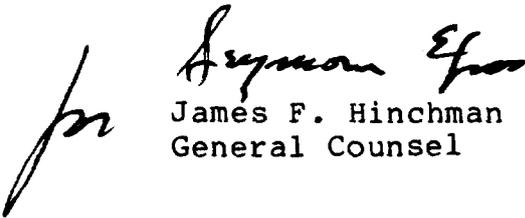
^{2/} JG also complains that GSA "invalidated" its most important product, with the greatest sales potential, under its prior contract. However, the record shows that JG failed to provide current fire-safety tests for the product despite the fact that it was given the opportunity to do so.

not covered by JG's contract. This unrealized order does not alter our conclusion that the contracting officer exercised reasonable business judgment in rejecting JG's offer.

Finally, JG alleges that GSA has acted in bad faith and that it cannot now invoke the Contract Award Sales Criteria provision after requesting test data and causing JG to incur major testing costs. We find this argument to be without merit.

GSA states that its evaluation of proposals did not begin until April 14, the date of the issuance of amendment No. 4. It states that on April 26, it verified JG's low sales record. In addition, GSA had to consider the impact of any new products offered by JG in its 1988 product line. GSA asserts that as soon as it became clear that JG's anticipated sales would not exceed \$25,000, the JG offer was rejected. Thus, the allegations that GSA misled JG into expending unnecessary funds or acted in bad faith are totally unsupported by the record. Accordingly, we uphold GSA's rejection of JG's offer.

The protest is denied.


James F. Hinchman
General Counsel