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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lion Apparel, Inc.

File: B-235511

Date: August 15, 1989

DIGEST

It was not unreasonable for a contracting agency to have awarded a negotiated contract to the lowest priced, highest technically rated offeror on the basis of initial proposals, where the solicitation informed offerors of that possibility and the competition was adequate to obtain the lowest overall cost to the government at a fair and reasonable price.

DECISION

Lion Apparel, Inc., protests award of a contract to R&R Uniforms, Inc., to provide a centralized uniform manufacturing and distribution program for the National Park Service, natural resources management employees of the Army Corps of Engineers, and the Fish and Wildlife Service. The solicitation (No. RFP-WASO-89-02) was issued by the Department of the Interior for a fixed price requirements contract covering some 300 uniform items for a base year and 4 option years. Lion contends that award of the contract on the basis of initial proposals was incorrect.

We deny the protest.

Technical considerations predominated over price in the solicitation's evaluation scheme. Written technical proposals, addressing Technical Approach, Organizational Experience and Performance, and Project Management, were to be submitted. The base year price proposals were evaluated on the basis of maximum points to be awarded the lowest proposed price, with remaining proposals assigned a percentage of the total, based on its ratio to the lowest price. As explicitly provided for in the solicitation, a figure of \$222,698, representing non-recoverable costs for conversion to a new contractor, was added to each non-incumbent contractor's prices for the first year. Those offerors determined to be in the competitive range following

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evaluation of their written technical and price proposals would then be required to submit samples of certain uniform items which would be examined for conformance to the specifications.

The solicitation advised offerors that award would be made to the technically acceptable, responsible offeror whose technical/price relationship was most advantageous to the government. Federal Acquisition Regulation (FAR) § 52.215-16(c) (FAC 84-17) was incorporated by reference and provided that the government could award a contract on the basis of initial offers received, without discussions. It further provided that each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

Three proposals were submitted. R&R, the incumbent contractor for all three agencies, received a technical score of 340 out of 360 points, while Lion received a score of 292,^{1/} and the third offeror received a score of 200. R&R was also the low-priced offeror even before the \$222,698 conversion factor was added to each of the other offerors' prices. R&R therefore received 100 points for its price, while Lion received 95 points, and the third offeror received 89 points. R&R's pricing proposal also was compared with current prices for certain high volume items which established that R&R's prices ranged from \$.20 to \$5.25 lower per item. Including conversion costs, Lion's price for the first year exceeded R&R's price by \$251,860.50.

Based on these high scores, the contracting officer determined that only R&R was in the competitive range. The contracting officer further determined that R&R's pricing was not unbalanced; its prices were competitive compared to previous prices paid; and that the price was the result of a competitive procurement conducted in accordance with the FAR. Finding R&R's initial proposal fair and reasonable, and concluding that the government had no reasonable

^{1/} The evaluators noted a number of weaknesses in Lion's proposal. For example, on the first article items, Lion stated it needed 120 days while the solicitation required submission in 30 days; on the 30 day turnaround time for non-standard sizes and back orders, Lion stated it needed 10 to 12 weeks for non-standard sizes and that the back order requirement was "unrealistic"; Lion's sample reports contained a number of errors; and Lion lacked experience with a uniform program with as many components as involved in this procurement.

expectation of more favorable terms and conditions through negotiations, the contracting officer awarded R&R the contract. Lion then filed its protest with our Office.

A contracting officer may make an award without conducting discussions provided that the solicitation advises offerors of this possibility and that it can be clearly demonstrated, from the existence of full and open competition or accurate prior cost experience with the product or service, that acceptance of the most favorable initial proposal would result in the lowest overall cost to the government at a fair and reasonable price. 41 U.S.C. § 2536(d)(1)(B) (Supp. IV 1986); FAR § 15.610(a) (FAC 84-16); Economic Consulting Servs., Inc., B-229895, Apr. 8, 1988, 88-1 CPD ¶ 351.

Lion challenges the contracting officer's decision to award on the basis of initial proposals, alleging that the solicitation contained no notice of that possibility and that there was neither sufficient competition, nor prior cost experience to support such a decision. It also claims to have been improperly excluded from the competitive range and argues that these factors indicate the agency intended to favor the incumbent, R&R.^{2/}

As we noted above, the solicitation did in fact advise offerors that award might be made on the basis of initial proposals. The agency received three proposals and selected the low priced, highest technically rated offeror, R&R. Moreover, the contracting officer found R&R's prices were lower than those currently being paid. Although Lion now contends, after award, that prices would have been lower through negotiations, there is no indication in the record that the agency had reason to believe that discussions would have resulted in a more advantageous price. Accordingly, we

^{2/} Lion also claimed that the agency failed to follow all evaluation criteria by not requiring the submission of uniform samples or conducting a preaward survey of Lion. The agency replies, without dispute in Lion's comments, that it was not necessary for R&R to submit uniform samples since that firm was the incumbent contractor, and samples were not requested of Lion because it was not otherwise being considered for award. Similarly, there was no purpose in conducting a preaward survey of Lion to ascertain its responsibility. In view of our conclusion that it was not unreasonable for the agency to proceed with award based on initial technical and price proposals, we agree that it need not have proceeded to these additional steps with respect to Lion's proposal.

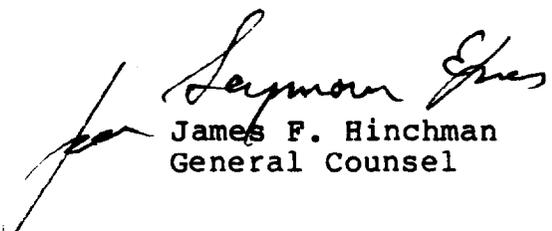
conclude that the contracting officer reasonably determined to award the contract on the basis of initial offers without discussions. See Economic Consulting Servs., Inc., B-229895, supra; Glar-Ban, B-225709, Apr. 14, 1987, 87-1 CPD ¶ 406.

Lion also has protested its exclusion from the competitive range. We need not address this issue since there is no requirement for the establishment of a competitive range where, as here, award is to be made to the low-priced offeror on the basis of initial proposals without discussions. The contracting officer's competitive range determination therefore was an unnecessary act under the circumstances of this procurement.

In view of our findings with regard to the existence of competition, and prior price experience, we are unpersuaded that Lion has carried its burden to demonstrate any intention by the agency to favor the incumbent, R&R. An incumbent's apparent advantage in meeting an agency's requirements is not an indication of an improper sole source procurement. Where, as here, there is no indication that such a competitive advantage is due to preference or unfair action by the government, the government is not required to equalize the offerors' competitive positions. See Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267.

Finally, Lion alleges for the first time in its comments on the agency report that the conversion costs added to its offer were "outrageously unreasonable" and also indicative of an intention to favor the incumbent. The solicitation plainly advised offerors both of the amount and application of the conversion factor, thus placing Lion on notice of it at the time it received the solicitation. If Lion wished to object to this procedure, its amount, or application, it was required to do so before the due date for submission of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988); Contract Servs., Inc., B-232689, Jan. 23, 1989, 89-1 CPD ¶ 54.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel