

0157 10/10/90



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trading Atlanta Ltd.

File: B-238978

Date: July 19, 1990

Stanley Joffe, for the protester.
Christine S. Williams, Esq., Office of General Counsel,
GSA, for the agency.
Paula A. Williams, Esq., and John F. Mitchell, Esq., Office
of General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Contracting agency's determination that protester failed to establish the reasonableness of its offered price is upheld since the record shows that the cost and pricing data furnished by the protester was inadequate to support its claimed costs.

DECISION

Trading Atlanta Ltd. protests the rejection of its offer submitted in response to request for proposals (RFP) No. 7FXG-A3-89-8305-N, issued by the General Services Administration (GSA). Trading Atlanta's offer was rejected because GSA determined that the firm failed to establish the reasonableness of its offered price. Trading Atlanta contends that it is entitled to award because its proposed costs were reasonable and the Small Business Administration (SBA) had issued it a certificate of competency (COC).

We deny the protest.

The RFP, issued on July 17, 1989, contemplated the award of a firm, fixed-price requirements contract to purchase chamois. Chamois is custom made from sheepskin and is used as filters for straining water and impurities from gasoline. Trading Atlanta was the only firm that submitted a proposal by the August 16 closing date.

As a result of a pre-award survey by GSA's Credit and Finance Division, Trading Atlanta's financial capability was assessed as unsatisfactory and a no-award recommendation was

049034 / 141807

sent to the contracting officer. On September 26, the contracting officer determined the firm to be nonresponsible based on the negative indications in the pre-award survey. The negative financial determination was the result of the protester having a large amount of debt, a negative net worth, a negative working capital, and being in a loss position on its current sales. Since Trading Atlanta is a small business concern, GSA referred the nonresponsibility determination to the SBA for a CCC review and the SBA issued a COC on October 18. Following repeated requests to Trading Atlanta to furnish adequate cost and pricing information, GSA rejected the firm's proposal on the ground that evaluation of its offer could not be achieved because the agency could not perform a cost and price analysis.

In its protest, Trading Atlanta challenges the reasonableness of GSA's determination that the firm had not furnished sufficient data to support its prices and implies that the agency's actions simply are a pretext to deprive Trading Atlanta of the award. Our review of the record finds no support for the protester's contentions.

The record indicates that pursuant to Federal Acquisition Regulation (FAR) § 15.804-2(a)(1)(i), which provides that certified cost or pricing data are required for any negotiated contract expected to exceed \$100,000, by letter dated October 16 the contracting officer requested Trading Atlanta to provide cost and pricing data. Accompanying the request from the agency were standard form (SF) 1411, Contract Pricing Proposal cover sheet; a copy of FAR § 15.804-6, table 15-2, Instructions for Preparation of Cost and Pricing Data; and supplemental clarification entitled Data Required to Support Cost and Rate Figures for SF 1411.

Trading Atlanta responded to this request by furnishing a completed SF 1411 dated October 19 along with a price breakdown but no supporting documentation for the proposed prices. By letter of November 9, the contracting officer informed Trading Atlanta that its submission was incomplete and identified the additional minimum information required to complete evaluation of Trading Atlanta's offer. The protester's November 17 response consisted of a revised pricing breakdown with reduced or changed proposed cost elements and increased profit without changing the proposed total price. Specifically, Trading Atlanta furnished quotes from only one supplier each to support its costs for dies, sheepskin testing, packaging, and freight. The agency considered this data inadequate to support Trading Atlanta's prices noting that the firm had not furnished competitive quotes for each item; thus, the cost/price analyst could not determine the reasonableness of the quoted prices.

By letter of December 19, the contracting agency again requested additional information, identifying specific deficiencies in Trading Atlanta's cost and pricing data to which the protester responded with a further revised price breakdown in which the profit was adjusted upwards while the total proposed price remained the same. The cost/price analyst advised the contracting officer that adequate supporting data had again not been furnished by Trading Atlanta and she therefore recommended rejection of the firm's offer for failure to provide the required documentation to support the proposed costs. Prior to acting on the price analyst's recommendation, the contracting officer received a protest from Trading Atlanta in which it contended that any failure to provide data satisfactory to GSA resulted from miscommunication with and a lack of cooperation by the agency; that the data it had provided was nevertheless adequate to find its proposed price reasonable; that it would provide further information if needed; and that it would be in the agency's best interests to proceed with an award to it. The agency denied Trading Atlanta's protest and rejected its offer by letter on the following day. Trading Atlanta then protested to our Office.

Under FAR § 15.608(b)(1) a contracting agency may reject all proposals received in response to an RFP if it is determined that all acceptable proposals received are at unreasonable prices. The determination that prices are unreasonable is a matter of administrative discretion which we will not question unless the determination is clearly unreasonable or there is a showing of fraud or bad faith on the part of contracting officials. Bell Indus., Inc., B-233029, Jan. 25, 1989, 89-1 CPD ¶ 81 at 3. In this case, the agency sought cost or pricing data to determine the reasonableness of the costs upon which Trading Atlanta's prices were based because chamois is custom made and the prices for this item are not based on established catalog or market prices. Additionally, the prices offered by the protester were approximately 28.62 to 52.46 percent higher than the prices offered under the prior contract for the same item. As noted previously, the agency expressed concern that the protester did not furnish verifiable data to support its costs for materials, labor, overhead, testing, packaging, or freight. For example, in its December 22 submission, the protester merely states that it had received a quote for sheepskin from a supplier but did not submit a copy of an invoice or the written quote to verify this claimed material cost. Likewise, in responding to the agency's request to substantiate its waste factor costs, Trading Atlanta responded initially with a statement that these costs were based on the firm's past experience

but did not furnish supporting data of its past experience and later submitted a diagram, not drawn to scale, to explain its estimating process for scrap sheepskin. Other deficiencies in Trading Atlanta's submission included an unsupported increase in profit, from 5.24 in its November 17 submission to 9.87 percent in its December 22 submission, and an unsupported 11 percent labor overhead cost. In addition, Trading Atlanta's response to the requests for cost data which would support its proposed price often consisted of changes to its cost data. The significant deficiencies in Trading Atlanta's cost and pricing data reasonably support the agency's conclusion that the data provided by the protester were not factual or verifiable.

Finally, Trading Atlanta alleges that GSA waived its right to reject the firm's proposal because it did not do so prior to the issuance of a COC by the SBA. We disagree. We have held that an agency's nonresponsibility referral to the SBA for consideration under the COC procedures does not constitute a waiver of a defect in an offer nor estop the government from rejecting a bid which is nonresponsive. Islip Transformer & Metal Co., Inc., B-225257, Mar. 23, 1987, 87-1 CPD ¶ 327; Dean's Sec. Professionals, B-224429, July 31, 1986, 86-2 CPD ¶ 132. Similarly, we do not think SBA's issuance of a COC obligated GSA to proceed with an award where the cost or pricing data provided was not adequate to support a conclusion that the offeror's price was reasonable.

Accordingly, the protest is denied.



for James F. Hinchman
General Counsel