

Andrew



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Military Waste Management, Inc.
File: B-240769.3
Date: February 7, 1991

Carl Weber for the protester.
Col. John C. Duncan, Jr., Department of the Air Force, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency's decision to extend the contract start date from October 1 to December 1 was not unreasonable where the agency undertook such action in order to enhance competition and the likelihood of receiving lower prices, and the protester's alleged competitive disadvantage is due to its own business judgment.
2. Propriety of an extension to a contract is a question of contract administration outside the scope of the General Accounting Office's protest review function.

DECISION

Military Waste Management, Inc. (MWMI), the incumbent contractor, protests the agency decision to delay commencement of performance under invitation for bids (IFB) No. F29605-90-B0021, issued by Cannon Air Force Base, New Mexico, for basewide refuse collection and disposal. MWMI asserts that this action, together with the extension of its contract, placed it at an unfair competitive disadvantage.

We deny the protest in part and dismiss it in part.

On August 2, 1990, the Air Force issued the IFB with a bid opening date of September 4. Section C-4 of the IFB required the successful contractor to furnish new and painted bulk refuse containers by the October 1 start date. By amendment No. 0002 issued on August 30, which also extended the bid opening to September 10, the IFB was changed to permit the contractor to utilize used containers for 60 days before furnishing new containers.

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In response to amendment No. 0002, two prospective bidders separately notified the Air Force that such action put other bidders at a competitive disadvantage with the incumbent, MWMI, because it already had used containers in place and could wait to provide new containers. On the other hand, these bidders maintained that furnishing new containers by October 1 would increase their prices because it would require several manufacturers working on a rush basis to furnish the required amount of new containers by the October 1 date, which, because no bidders, other than MWMI, possessed used containers, would make their bids more expensive. Therefore, by amendment No. 0003, the contract start date was extended to December 1 and the requirement for new containers was reinstated. In connection with this action, the Air Force extended MWMI's current contract to November 30.

MWMI protests the Air Force's action of extending MWMI's, contract and delaying the commencement of performance under the IFB. MWMI contends this was done merely so that other bidders would not be burdened in fulfilling the requirement to provide new trash containers by October 1.^{1/} MWMI argues that this favored the other bidders while forcing it to endure an extreme financial hardship,^{2/} since it could not recoup its debts by using or selling for use these used containers for contracts commencing October 1, the date on which most contracts start. Instead, MWMI asserts that it would be forced to recoup the debt by incorporating the debt into its bid price on the IFB.

At the outset, we note that it is a general rule of federal procurement that specifications should be drafted in such a manner that competition is maximized unless a restrictive requirement is necessary to meet the government's legitimate minimum needs. American Lock Co., B-235499, Aug. 10, 1989, 89-2 CPD ¶ 125. Further, absent evidence of favoritism, fraud, or intentional misconduct by government officials, we will not question an agency's decision to relax solicitation requirements and thus enhance competition. Id.

^{1/} Although MWMI questions the need for new containers, it did not timely protest this requirement prior to bid opening. See 4 C.F.R. § 21.2(a) (1990). In any event, the Air Force reports that the requirement for new containers was necessary to replace 15 year old dumpsters.

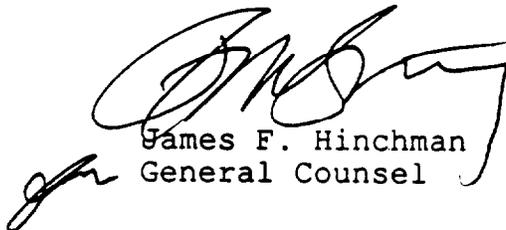
^{2/} MWMI contends that this action placed it at a competitive disadvantage due to the debt load it was required to carry because the Air Force was not exercising the option under MWMI's current contract.

The Air Force acted reasonably in extending the start date for commencement of contract performance. The Air Force survey of several container manufacturers confirmed the concerns raised by prospective bidders that new containers could not economically be provided by October 1 and that this could adversely affect the competition. Thus, the Air Force was justified in extending the start date in order to enhance the likelihood of receiving lower prices.

While MWMI argues that the Air Force should have considered the possible competitive disadvantage of these actions upon MWMI's bid price, the record shows that MWMI's disadvantage was attributable to its own business judgment; specifically, MWMI's decision to recoup the debt by increasing its bid price on the IFB. However, this competitive disadvantage is not one that the Air Force was required to ameliorate. See Mantanuska Maid, B-235607.2, June 30, 1989, 89-2 CPD ¶ 18.

To the extent that MWMI is challenging the propriety of the Air Force's extension to its current contract, we dismiss the protest. Our Office is empowered only to consider protest against the award or proposed award of contracts. See 31 U.S.C. § 3552 (1988). The question of whether the Air Force properly exercised the extension in MWMI's incumbent contract relates to the Air Force's administration of that contract, which is within the agency's discretion and only reviewable by a cognizant board of contract appeals or the U.S. Claims Court. See 4 C.F.R. § 21.3(m)(1); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228. Thus, this matter is not within the scope of our bid protest authority.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel