



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Knoll North America, Inc.
File: B-250234
Date: January 11, 1993

Charles F. Gaul for the protester.
Steve Williams for Haworth, Inc., an interested party.
Lt. Colonel John M. Pellett and Major Bobby G. Henry, Jr.,
Departments of the Army and the Air Force, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Contracting officer's decision not to delay bid opening despite protester's request for clarification was not unreasonable where contracting officer promptly responded to protester's clarification request and the protester fails to show why it could not, based on the information furnished, prepare its bid by the scheduled opening.
2. Where all elements enumerated in the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(2) (1988), for the use of sealed bidding procedures are present, agencies are required to use those procedures and do not have discretion to employ negotiated procedures.

DECISION

Knoll North America, Inc. protests the terms of invitation for bids (IFB) No. DAHA51-92-B-0016, issued by the Alaska National Guard PFO Armory, Fort Richardson, Alaska, for the purchase and installation of systems furniture for the National Guard Armory at Camp Denali, Fort Richardson, Alaska.

We deny the protest.

In March 1991, the agency purchased design services for office systems furniture from Federal Prison Industries, Inc. doing business under the trade name UNICOR.¹ UNICOR provided a design that included UNICOR's parts numbers which were based on items produced by Krueger International. The bill of materials and design/drawings provided by UNICOR stated the exact sizes and types of products required. By letter dated June 16, 1992, the agency requested a waiver from UNICOR to purchase the systems furniture through full and open competition. UNICOR granted the waiver on July 6. On July 8, the requirement for 119 workstations was synopsized in the Commerce Business Daily. The notice contained the solicitation number and a bid opening date of August 26 and invited firms to submit either a written or facsimile request for a bid package.

On August 7, the agency mailed copies of the solicitation to manufacturers on the General Service Administration (GSA) Federal Supply Schedule and to those parties who requested copies in writing. A copy was mailed to the Knoll offices in Grand Rapids and Muskegon, Michigan. The agency reports that it did not receive a request for a solicitation from Knoll's Seattle, Washington, office and consequently did not send that office a bid package. Bid opening was scheduled for September 8.

The solicitation contained UNICOR's bill of materials which referenced UNICOR's model numbers or equal and specified the exact sizes, measurements, and types of materials required. The solicitation also specifically recognized that workstations from different manufacturers would vary in dimensions and components. The solicitation provided that dimensions shall conform to the UNICOR designs as close as possible and if there is a variance within 2 to 5 percent, the bidder was required to send an explanation with its bid to determine responsiveness. Variances greater than 5 percent were to be considered nonresponsive. The solicitation also contained a requirement for descriptive literature.

On August 30, in a letter to the agency, Knoll requested written clarification of the requirements and an extension of the bid opening date. In this letter, Knoll stated that it received the solicitation in its Grand Rapids office on August 25 and did not receive the solicitation in its Seattle office at all. Knoll complained that while the

¹Generally, 18 U.S.C. § 4124 (1988) and Federal Acquisition Regulation (FAR) § 8.602(a) (FAC 90-41) require government agencies to purchase supplies listed in UNICOR's schedule so long as the prices charged do not exceed current market prices.

UNICOR bill of materials referenced UNICOR model numbers, they were based on Krueger's product and, therefore, Krueger had a competitive advantage over other bidders. Knoll also complained that there were discrepancies between the UNICOR drawings and the specifications. For example, Knoll contended that the specifications require 86-inch panels while the drawings show 80-inch panels, the specifications call for panel-hung lateral files while the drawings show free-standing files and the specifications require that products meet certain GSA standards, but later require that certain items have ratings in excess of the GSA standards.² Oral discussions took place on August 30 and 31 between the contracting officials and Knoll in which the contracting officials informally responded to Knoll's request for clarification of the specifications.

By letter dated September 2, apparently received by Knoll on September 3, the agency informed the protester that copies of the solicitation were sent to its two offices in Michigan and that the agency did not have any record of a request for a copy from the protester's Seattle office. The agency stated that it had no explanation for the delay between the mailing and receipt of the bid packets but that the solicitations were in fact mailed on August 7, the postmark date. The agency declined to extend the bid opening date. The agency confirmed its oral advice that the specifications, design/drawings, and bill of materials had to be read as a whole and that the solicitation specifically states that where conflicts occur, the more stringent requirements shall apply. With respect to the alleged discrepancies in the specifications, the agency stated that the specification speaks of a range from 30-86 inches for the panels and that the designs state the height that individual offices require. The agency further stated that, as indicated in the design drawings, some offices will have free-standing files and others will have panel-hung lateral files.

²Knoll also raised these objections to the specifications in its initial protest to our Office. The agency in its report specifically responded to these objections. In its comments to the agency report, Knoll failed to rebut the agency's explanation that the specifications when read as a whole were not ambiguous. We therefore consider the protester to have abandoned this issue. Mitchell Constr. Co., Inc., B-245884; B-245884.2, Jan. 17, 1992, 92-1 CPD ¶ 92. However, Knoll has not abandoned its protest that the bid opening should have been extended because of the complicated nature of the specifications.

At bid opening on September 8 two bids were received. On the day of bid opening Knoll filed its protest with our Office. Evaluations of bids have not been completed. Knoll basically argues that the contracting officer acted unreasonably by not postponing bid opening in order to clarify the specifications and to allow bidders more time to prepare bids. We disagree. Contracting agencies are to allow a reasonable period of time for prospective bidders to prepare and submit their bids. A bidding time (the time between the issuance of the solicitation and the opening of bids) of at least 30 calendar days is to be provided. Federal Acquisition Regulations (FAR) § 14.202-1 (FAC 90-7). The IFB was issued on August 6 with a bid opening date of September 8, and thus met the FAR standard. On August 30, 5 days after receipt of the solicitation, Knoll submitted a request for clarification to the agency. The agency verbally and in writing promptly responded to the clarification request.

Knoll does not explain why it could not have prepared its bid based on the information received in the response to the request for clarification within the time available. Because this procurement is for systems furniture, basically catalog items, and the agency immediately responded to Knoll's inquiry, in the absence of a convincing explanation from Knoll, we do not see why a delay was required. We have no basis to find unreasonable the contracting officer's decision not to delay bid opening. T&A Painting Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435.

It appears that Knoll declined to bid because the solicitation specifications were based on Krueger products. However, while specifications were based on Krueger products, as stated above, the solicitation permitted equal products and allowed for variation in dimensions. Thus, the solicitation provided for bids of comparable products and Knoll does not explain why it could not bid its own products under this IFB.³

Knoll also objects to the agency's use of sealed bidding procedures and maintains that discussions with bidders are necessary before the bid opening and will be necessary during bid evaluation.

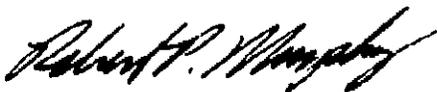
³Knoll contends that since Krueger allegedly prepared the design and bill of materials as UNICOR's subcontractor, Krueger should have been excluded from the competition. We view this protest allegation as academic because the record shows that Krueger did not submit a bid and did not otherwise participate in this procurement. East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

Under the Competition in Contracting Act of 1984 (CICA), contracting agencies are required to obtain full and open competition and, in doing so, are required to use competitive procedures--negotiation or sealed bids--that they determine to be best suited to the circumstances of a given procurement. 10 U.S.C. § 2304(a)(1) (1988); Military Base Mgmt., Inc., 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720. CICA further provides that, in determining which competitive procedure is appropriate, an agency shall solicit sealed bids if: (1) time permits; (2) award will be based on price; (3) discussions are not necessary; and (4) more than one bid is expected. 10 U.S.C. § 2304(a)(2). Because of this language, the use of sealed bidding procedures is required where the four specified conditions are present. Northeast Constr. Co., 68 Comp. Gen. 406 (1989), 89-1 CPD ¶ 402. Negotiated procedures are authorized only if sealed bids are not appropriate under 10 U.S.C. § 2304(a)(2)(A). See 10 U.S.C. § 2304(a)(2)(B).

Here, all the requirements for the use of sealed bidding procedures existed. The record shows that the agency had the required amount of time for issuance of the solicitation and evaluation of bids, the award was to be made on price alone, discussions were not necessary because the procurement involves the purchase of commercial items that are for the most part obtainable from GSA schedule vendors and there was a reasonable expectation of receiving more than one sealed bid as did occur at bid opening.

Finally, Knoll maintains that the products offered by the two firms who did respond to the IFB do not match the "exact sizes, measurements, types of materials [and] detailed parts/component descriptions" required in the IFB. Knoll provides no specific details concerning this allegation. As stated above, some variance from the specifications was permissible under the IFB. In any event, the agency reports that they have not completed the evaluation, and no award has been made, but the preliminary results show that the low bidder is responsive to the IFB. We dismiss this protest allegation because it merely anticipates improper action that has not yet taken place. Protests that merely anticipate improper agency action are speculative and premature. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel