

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60725

FILE: B-184420

DATE: April 7, 1976

B-185206

MATTER OF: Poloron Products, Inc.

99097

DIGEST:

1. Where contracting officer's determination that offeror was nonresponsible under RFP was premised upon basis that offeror's proposal was technically unacceptable, it is clear that it was being rejected for insufficiency of proposal, not for lack of capacity or credit, and therefore nonreferral to SBA was proper.
2. Protester's questioning determination that proposal was technically unacceptable on basis that contracting officer failed to utilize best technical advisors for evaluation is not relevant, since by its own admission in letter dated closing date for negotiations it had not provided all material necessary to establish production line acceptability.
3. Determination whether to issue RFP for separate procurement while protest is pending under another RFP is matter for contracting agency discretion.

Poloron Products, Inc. (Poloron), protested the award of a contract to Etowah Manufacturing Co. under request for proposals (RFP) DAAA09-75-R-0081, issued by the Army Armament Command (ARMCOM), Rock Island, Illinois, for the design, layout, procurement, installation and trial run of production line facilities for the manufacture and assembly of the body assembly metal parts for grenades M42/M46.

The protest has been the subject of several agency reports and charges, rebuttals, and comments. However, the essential issue presented by all of this material is whether the contracting officer had to refer to SBA for consideration of the issuance of a certificate of competency the determination that Poloron, a small business concern, was nonresponsible for award of a contract under the RFP. In that connection, the RFP listed

B-184420
B-185206

a number of criteria which it stated would be utilized in determining the offeror's responsibility in meeting the technical requirements. The criteria were:

- "A. Equipment layout and sequence for operations.
- B. Equipment requirements.
- C. Grenade metal parts fabrication processes.
- D. Production equipment efficiency rate and scrap rate.
- E. Tool and gage plans.
- F. Knowledge of Inspection Criteria."

Upon the basis that Poloron's proposal did not "comply with the technical requirements" and that the "proposal is technically not acceptable," the contracting officer determined that Poloron was not responsible.

ASPR § 1-705.4(c) (1974 ed.) states:

"If a bid or proposal of a small business concern is to be rejected solely because the contracting officer has determined the concern to be nonresponsible as to capacity or credit, the matter shall be referred to the appropriate SBA field office having the authority to process the referral in the geographical area involved. * * *"

Since the determination of the contracting officer was premised on the basis that Poloron's proposal was unacceptable for technical reasons, it is clear that Poloron was being rejected for the insufficiency of its proposal and not for lack of "capacity or credit." Therefore, rejection of Poloron's proposal without referral to SBA for a certificate of competency was proper. See

B-184420
B-185206

General Exhibits, Inc., B-182669, March 10, 1975, 75-1 CPD 143;
Transportation Improvement Planning Systems, Inc., B-181248,
April 9, 1975, 75-1 CPD 217.

Poloron has questioned the determination that its proposal was technically unacceptable on the basis that the contracting officer failed to utilize the best technical advisors for the evaluation. However, the question is not relevant. Section 3 of the RFP statement of work required the proposal to establish a complete production line capable of manufacturing the M42/M46 grenade metal parts assembly and stated further:

"The production line shall include all the necessary production and material handling equipment, tooling, gaging and inspection facilities required for the stated production rate. In addition, the Offerer is responsible for providing all the material necessary to demonstrate the acceptability of the production line to the Government."

By its letter dated the closing date for negotiations, Poloron indicated that it had not included in the proposal all the information which would demonstrate the acceptability of the production line. The letter stated:


"Of course as you know it is extremely difficult to clearly predetermine exactly the specific requirements at this time. It is also difficult to transmit the variable combinations in letter form. For example if the Poloron ironing operations are to be performed it will delete the 15 chuckers. For this reason to fully clarify our proposal perhaps a roundtable discussion could resolve some of the variables that may exist."

B-184420
B-185206

Thus, by its own admission, Poloron had not provided by the close of negotiations all the material necessary to establish the production line acceptability.

Accordingly, the protest is denied for the reasons stated above.

Poloron also protested that another procurement for a similar item should be suspended by our Office while the above matter is pending here for decision. Notwithstanding this protest, an RFP was issued subsequently. Our Office will not decide the protest, because the determination whether to issue an RFP for a separate procurement while a protest is pending under another RFP is a matter of contracting agency discretion which will not be interfered with by our Office.


Acting Comptroller General
of the United States