

GAO

Briefing Report to Congressional
Requesters

September 1986

CONTESTED
PROCUREMENT

Washington
Metropolitan
Area Transit
Authority and
Everson Electric



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**Resources, Community, and
Economic Development Division**

B-224121

September 25, 1986

The Honorable Arlen Specter
Chairman, Subcommittee on District
of Columbia
Committee on Appropriations
United States Senate

The Honorable Donald Ritter
House of Representatives

Your July 22, 1986, letter (see section 3) asked us to investigate the actions of the Washington Metropolitan Area Transit Authority (WMATA) regarding its decision to award a contract to Swiger Coil System and to deny a subsequent bid protest from Everson Electric Company under WMATA's Invitation for Bids No. IFB-RAIL-86-2. The results of our work are summarized below and described in more detail in Section 1 of this briefing report. You also asked us to provide information on the Disadvantaged Business Enterprises (DBEs) procurement procedures followed by WMATA, which are included in section 2. On September 2, 1986, we briefed your offices on the information contained in this briefing report.

WMATA's AWARD AND DENIAL DECISIONS

WMATA's actions in deciding to award a contract and its subsequent denial of a bid protest were, in our opinion, not improper. The basis for our conclusion is described below.

The award decision

According to WMATA, Everson failed to comply with WMATA's requirements in two ways: First, DBEs are to submit signed letters of intent to the prime contractor stating their intent to participate in the contract. This requirement was stated in the solicitation. Everson did not submit required letters of intent from the five DBE firms it had listed on its schedule of DBE participation. Second, Everson did not request a waiver of DBE participation as required by WMATA's Invitation for Bids. Consequently, WMATA rejected Everson's bid even though the firm was the apparent low bidder.

WMATA also rejected two other bids--from Northeast Marine Electric (this bid was 68 percent over WMATA's price estimate and did not submit DBE-related material) and from Swiger Coil System (this bid contained less than the goal of 35-percent DBE participation). WMATA then decided to cancel the solicitation and re-advertise. However, Swiger protested WMATA's rejection of its bid. According to Swiger, when WMATA calculated the cost estimate for Swiger's proposal, the proposal contained duplicate work items (one for new and one for rebuilt motor components, items that were mutually excluded under the solicitation requirements). Swiger maintained that if either item were deleted from its bid price, its bid would exceed the 35-percent goal for DBE participation. WMATA's General Counsel concurred and, on the basis of its advice, the WMATA contracting officer determined that Swiger's bid should be accepted. On August 14, 1986, the WMATA Board of Directors approved the award of the contract to Swiger Coil System.

The bid protest decision

On July 15, 1986, Everson protested WMATA's July 7, 1986, announced intent to contract with Swiger because Everson was the low bidder. Based on its determination that Everson's original bid did not meet the requirements of the Invitation for Bids, WMATA, on July 23, 1986, denied Everson's bid protest. In the original bid, Everson failed to meet the DBE goal, a material condition of the solicitation, which, if not met, or if a waiver were not requested in the bid package, would result in the Authority's rejection of the bid. WMATA's records show that 2 days after the bid opening, Everson had submitted a letter of intent from its major proposed DBE, but this letter was unsigned.

From our investigation, we determined that WMATA had followed its procurement procedures and that its contract award to Swiger Coil System and rejection of Everson Electric's bid were not improper. In addition, we found no indication of improper influence by Swiger or its proposed subcontractors.

Our work was done primarily at WMATA's Washington, D.C., headquarters. We interviewed officials in WMATA's Auditor General, General Counsel, Civil Rights, and Procurement offices. As requested, we reviewed pertinent files, documents, and correspondence. We also interviewed Everson Electric officials. We discussed the information in this briefing report with WMATA officials and have incorporated their comments where appropriate.

B-224121

As arranged with your offices, unless you announce its contents earlier, we plan no further distribution of this briefing report until 15 days after the date of this letter. At that time we will send copies to WMATA's Board of Directors and other interested parties. If we can be of further assistance, please contact me at (202) 275-7783.



Herbert R. McLure
Associate Director

SECTION 1

WMATA's CONTRACT AND BID PROTEST DECISIONS

BACKGROUND

On January 17, 1986, the Washington Metropolitan Area Transit Authority (WMATA) solicited bids for the repair and overhaul of 48 railcar traction motors. On March 5, 1986, bids received from Everson Electric Company, Swiger Coil System, Inc., and Northeast Marine Electric were opened. Everson bid \$440,248, Swiger \$449,667, and Northeast Marine Electric \$744,838. Everson, the apparent low bidder, failed to submit signed letters of intent from its proposed Disadvantaged Business Enterprise (DBE) subcontractors, as required. In a May 7, 1986, letter, Everson was notified that its bid had been rejected. WMATA's Invitation for Bids (IFB) provided a goal that at least 35 percent of the contract work was to be performed by DBE minority contractors. The goal is a material condition of the solicitation; if the goal is not met or a waiver is not requested in the bid package, WMATA would reject the bid.

The second low bid by Swiger was initially determined to be unacceptable because the bid did not meet the 35-percent goal for DBE participation as required in the IFB. The third bid, by Northeast Marine Electric, was incomplete and considered excessive in price.

On June 20, 1986, WMATA notified the bidders that all bids were rejected and that the IFB would be re-advertised in the near future. However, Swiger then filed a protest with WMATA asserting that its bid should have been accepted and that it should be awarded the contract. WMATA's General Counsel reviewed the protest and advised the WMATA contracting officer that Swiger's bid was acceptable. However, WMATA's total contract price calculation for DBE purposes erroneously included two items, 48 new commutators (a motor component) and 48 rebuilt commutators. Under this contract, only 48 commutators, either new or rebuilt, were to be supplied. Using only the higher price to supply 48 new commutators, Swiger's bid was \$405,947, a reduction of \$43,680.

As a result of WMATA's recalculation of the bid to include only new commutators, Swiger's schedule of DBE participation represented 35.7 percent of the contract price, and therefore met the DBE goal stated in the solicitation. Consequently, WMATA's General Counsel ruled that Swiger's protest had merit. On the basis of the General Counsel's ruling, the contracting officer recommended awarding the contract to Swiger. WMATA's Board of Directors approved the contract award to Swiger on August 14, 1986.

EVERSON DID NOT MEET
MATERIAL SOLICITATION CONDITIONS

Under WMATA's sealed bid procedures, the first step after bids are opened is to review any documents submitted with the bid by the low bidder to determine whether the bid may be accepted as an unqualified offer to do the exact work called for in the solicitation. A bid must contain all signatures, certifications, acknowledgment of amendments, bonding certificates, and similar items specified in the IFB. DBE documents, including schedules of participation and signed letters of intent or request for waiver, must also be included in the bid. According to the IFB, a bid will be rejected if items specifically required are not included in the bid package submitted. The WMATA IFB provided clear notice to all bidders of these requirements.

Even though Everson was the apparent low bidder, its bid was determined to be unacceptable because it did not submit signed letters of intent by the DBEs it proposed nor did it request a waiver of the DBE requirement. Everson submitted a letter of intent from its major proposed DBE 2 days after bids were opened, but this letter was unsigned.

We questioned WMATA about the time (5 weeks) it took to determine whether the Everson bid was acceptable. According to WMATA, Everson's bid determination followed WMATA's normal procedures and the processing time was not unusual.

OUTCOME OF EVERSON BID PROTEST

Everson was notified in a May 7, 1986, letter from WMATA that its bid had been rejected. On July 7, 1986, WMATA notified all bidders that it then considered Swiger's bid responsive and intended to issue Swiger a contract instead of re-advertising the contract. Everson filed a bid protest on July 15, 1986, asserting that WMATA knew that Everson possessed a letter of intent from Applied Electric Technologies Corporation, Everson's major proposed DBE, and that failure to include the letter with the IFB constituted only a minor informality that did not affect the acceptability of the bid. Contrary to Everson's opinion, the necessary paperwork for DBE participation must be included in the bid package. WMATA reviewed and denied the bid protest on July 23, 1986, because Everson had not met the IFB requirement to include in its bid either signed, dated letters of DBE intent to participate or a request for waiver of DBE participation.

WMATA PROPERLY FOLLOWED ITS
ESTABLISHED PROCUREMENT PROCEDURES

WMATA procurement procedures were properly followed and were fairly applied to all bidders. We reviewed WMATA's handling of bid protests by Swiger Coil System and Everson Electric Company and the subsequent award to Swiger and found no indication of improper influence by Swiger.

SECTION 2

SELECTED WMATA PROCUREMENT PROCEDURES

GOALS FOR DBE PARTICIPATION

Section 73 of WMATA's Compact (the legal document by which the District of Columbia, Maryland, and Virginia formed WMATA) encourages competitive procurement but prohibits the use of DBE set asides (a percentage of contract work specifically reserved for DBEs) to ensure that those firms, as defined in 49 CFR Part 23, have the maximum opportunity to participate. Since WMATA does not have set asides, its Board of Directors has set a goal of 35 percent participation for DBEs in supply and service contracts. A bid that does not meet the DBE goal and for which a waiver is not requested will be rejected under WMATA's procurement policies. If a contractor cannot find sufficient DBE participation, the contractor may submit a request for waiver with its bid. WMATA's Office of Civil Rights reviews requests for waivers and provides its recommendation on whether to grant a waiver to the contracting officer. The WMATA contracting officer usually accepts such recommendations. Contractors are encouraged to aggressively recruit minority firms to serve as subcontractors.

WMATA contracts with Boone, Young and Associates, a technical assistance contractor, to assist contractors in locating DBEs. This service is provided free of charge to potential WMATA contractors. As part of its efforts to assist potential contractors, WMATA, in July 1985, published a catalog of certified DBE firms by area of expertise. This catalog was available to all potential contractors including those choosing to bid on the subject procurement who may have had a need to contact additional DBE firms.

For contracts over \$100,000, the Board of Directors has final approval of contract awards, including requests for waivers. Everson submitted no request for waiver.

CERTIFICATION OF DBE's

WMATA's Certification Review Board reviews submissions for certification by potential DBEs. The Review Board is a 5-member rotating board, with an official from the Office of Civil Rights serving as chair. The Review Board determines whether the business concern is minority-owned and -controlled as defined in 49 CFR Part 23 which states that in order for a business concern to be certified as a DBE, the business concern must be 51 percent owned and operated by a disadvantaged group member(s). Whether or not the business concern is technically qualified to perform the work is not determined at this time.

SECTION 3

REQUEST LETTER

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510

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July 22, 1986

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

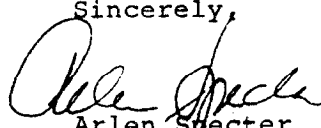
Dear Mr. Bowsher:

This letter is to request an immediate investigation of the action of Washington Metropolitan Area Transit Authority regarding IFB-RAIL-86-2 and the circumstances behind this entire series of actions. We would appreciate an interim report as soon as possible to the Senate Appropriations Subcommittee on the District of Columbia and to Congressman Ritter.

We have enclosed 1) the initial abstract of bid showing Everson as the low bidder, 2) the letter from Procurement Director Rhodes rejecting all bids, and 3) a letter from Rhodes awarding the contract to Swiger Coil.

We have also enclosed Congressman Ritter's testimony before the Subcommittee which highlights our concerns. We are particularly troubled by the failure of the Authority to evaluate whether the Everson Electric MBE/DBE firm was qualified to perform the required work, leading to the proposal to award this contract to Swiger Coil. Also, by the procedures followed by WMATA.


Member of Congress

Sincerely,

Arlen Specter

AS:DR:tlj

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