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WASHINGTON, D.C. 20548

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B-187730

JUN 1 1977

~~The Honorable Delbert L. Latta~~
House of Representatives

Dear Mr. Latta:

In your February 23, 1977, letter you asked us to review the solicitations for scissors and shears made by the Clauss Cutlery Company to determine why its bids are consistently denied by the General Services Administration (GSA) in favor of a foreign bidder.

We reviewed solicitations FPNTP-A2-19332 and FTAP-A2-60895 cited in your letter as well as GSA solicitations for scissors and shears in 1973, 1974, and 1975. Solicitation FPNTP-A3, dated August 29, 1968, was not available for review because GSA does not retain such data for more than 6 years.

We also reviewed applicable procurement regulations and interviewed GSA personnel responsible for bid evaluation and contract awards for scissors and shears.

Evaluation of Foreign Bids

GSA follows the Federal Procurement Regulations which require that bids submitted by foreign firms be increased by 6 percent, including import duties, before comparison with domestic bids. In the case of procurements from small business or a labor surplus area, foreign bids are increased by 12 percent when the resulting contract would not exceed \$100,000.

The results of our evaluations are as follows:

Solicitation FPNTP-A2-19332-A-5-12-72

Clauss Cutlery Company submitted bids on three items in this solicitation. For all three items, Kingshead Corporation, a supplier of foreign made items, was the only other bidder. We found that Kingshead Corporation was the low bidder on all three items. However, Kingshead was awarded a contract for only one item because the other two items failed to meet GSA specifications. Solicitation FPNTP-A2-19332-N-7-21-72, discussed in the following paragraph, was issued for the remaining and other items.

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Solicitation FPNTF-A2-19332-N-7-21-72

Four firms were solicited but only Clauss Cutlery Company and Kingshead Corporation submitted bids and bid samples. Both firms bid on four items, and Kingshead Corporation was the low bidder on all four. Kingshead received a contract for these items.

Solicitation FPWP-A2-55264-A-7-1-74

Clauss Cutlery Company and Kingshead Corporation bid on 10 items listed on this solicitation. The Scissors Company, also a supplier of foreign made items, bid on 3 of the 10 items, and J. Wiss and Sons Company, a domestic manufacturer, bid on 1 of the 10 items.

We examined all bids and found that Kingshead Corporation was the low bidder on 7 of the 10 items and was awarded a contract for them. The Scissors Company was the low bidder on the remaining three items, but its samples failed to meet GSA specifications. Kingshead Corporation was also awarded a contract for these three items since it was the next low bidder.

Solicitation FTAP-A2-60895-A-7-22-76

Clauss Cutlery Company and Kingshead Corporation bid on 12 items listed in this solicitation. For 9 of the 12 items, Clauss Cutlery and Kingshead were the only bidders. The W. H. Compton Shear Company, a domestic manufacturer, also bid on the other three items.

We reviewed all bids and determined that Kingshead Corporation was the low bidder on all but one item. For that one item Clauss Cutlery Company was the low bidder, but its bid sample failed to meet GSA specifications, and Kingshead Corporation was awarded the contract for all 12 items. As a result of a protest received from Clauss, we issued the enclosed decision on May 11, 1977, which states that GSA handled Clauss' bid sample in accordance with established procedures.

Since Clauss' bid sample failed to meet specifications, Clauss was concerned as to the adequacy of GSA's procedures for handling bid samples. Accordingly, we reviewed the procedures as outlined in the following paragraph and found they were adequate.

Most bid samples are received by registered mail and delivered to a Federal Supply Service (FSS) sample room for processing. Some samples arrive by commercial freight or parcel handling companies which require the signature

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of an FSS employee to acknowledge receipt of the samples. Occasionally representatives of firms will personally deliver samples. FSS personnel date stamp the packages.

In the sample room FSS personnel note sample receipts on record sheets prepared for each solicitation and then inspect the exterior and contents of each package for damage. If there is any damage, FSS personnel make note of the damage and notify the bidding firm. All samples are then placed on shelves in their original packing which is labeled with the bidder's name, the solicitation number, and the item stock number.

On bid opening date, the contracting officer randomly selects for testing one of the two samples submitted by each bidder. The second sample is examined and subjectively evaluated. The test sample is packaged and sent to a GSA testing laboratory by registered mail. At the testing laboratory, a technician inspects the exterior and contents of the package for damage and records any discrepancies found.

After the samples have been tested, they are repackaged and returned to the FSS sample room by registered mail. Samples of items for which contracts have been awarded are stored on shelves for the duration of the contract. Samples from unsuccessful bidders are disposed of or returned to the bidder in accordance with his instruction.

FSS officials told us that the decision on whether or not to test both samples of an item is judgmental. Normally, both samples are not tested. FSS officials said they prefer not to test both samples because a sample may be altered or even destroyed in testing, and one unaltered sample is needed as a benchmark should a firm be awarded a contract. Samples of production lots are periodically compared with this benchmark in order to be sure that the product quality is consistent.

Conclusion

On the basis of our review of solicitations discussed in this report, we found no evidence that Clauss Cutlery Company was the low bidder except for one item in the 1976 solicitation in which its sample did not meet GSA specifications.

In making this determination we considered the requirements of the Buy American Act and found foreign bids were from

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2 to 71 percent lower than those of Clauss Company. Also, even after increasing the bids by 12 percent, assuming Clauss Cutlery Company to be a small business or in a labor surplus area, the foreign bidder was still low bidder except for the one item in the 1976 solicitation.

We believe that the contracts GSA awarded were in accordance with Federal Procurement Regulations.

We hope this information has satisfactorily answered your questions. If we can be of further assistance, please let us know.

Sincerely yours,


DEPUTY Comptroller General
of the United States

Enclosure

ENCLOSURE I

ENCLOSURE I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20549**

FILE: B-187730

DATE: May 11, 1977

MATTER OF: Clauss Cutlery Company

DIGEST:

Protest alleging that submitted bid sample was damaged by Government, causing it to fail required testing, is denied since agency handled sample in accordance with established procedures designed to adequately protect samples and denies knowledge of how or when damage was incurred, and record does not otherwise affirmatively establish that damage was fault of agency. Agency's failure to advise bidder of test results prior to award was consistent with applicable regulations.

Invitation for bids (IFB) No. FTAP-A2-60895-A was issued by the Federal Supply Service, General Services Administration (GSA) on June 22, 1976, for various types of shears, scissors, scrapers, and nibbling tools to be furnished on a requirements basis between November 1, 1976 and October 31, 1977. The solicitation required submission of two samples of each type of item bid upon and stated that failure of a sample to conform to GSA specifications would result in rejection of a bid based on that sample.

Clauss Cutlery Company (Clauss) was low bidder for Item No. 1, 9-inch shears, after application of the Buy American Act differential to the price of the only other bidder, Kingshead Corporation (Kingshead) of Hackensack, New Jersey, an importer of Italian shears. Clauss' bid was rejected, however, because one of its samples failed to cut completely through three thicknesses of cotton sheeting, as required by paragraph 4.5.1 of Interim Federal Specification GGG-S-0278a (June 16, 1964) and Interim Amendment No. 4 (March 1, 1971). The GSA laboratory report also showed that on the tested sample, the cutting action ceased one-half inch from the points of the shears. Award to Kingshead was made on October 18, 1976.

On the day following award, Clauss' president met with GSA representatives and learned that of the two samples, one had been sent from Washington, D.C. to Kansas City, Missouri, for the required laboratory tests; the other had not been tested. Examination of the tested pair revealed that the blades had been bent, resulting in looseness which in turn caused the points not to cut.

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The untested pair, demonstrated by Clauss' president cutting through a folded handkerchief, did cut cleanly. Clauss then protested, arguing that the tested sample was damaged while in the hands of the GSA and that the firm did not have an opportunity to comment on the test results before award.

GSA states that it has no reason to believe the Government mishandled or damaged Clauss' bid sample, and points out that the shears could have been damaged during shipment from Clauss to GSA. In this regard, GSA's National Tools Center has provided a detailed description of the procedures it utilizes in handling bid samples. Under those procedures, samples received by mail are hand-carried to a sample room and examined before opening for external damage. Access to the storage area is controlled by a buzzer and a gate which is released only from the inside. Samples are stored in the packages in which they have been received until bid opening, when they are examined by three persons, including the contracting officer. If testing by the Kansas City laboratory is required, shipment is by registered mail. For shipment in this case, the GSA log shows that one of Clauss' samples and three of Kingshead's, in their original packages, were placed together in a standard commercial fiberboard box, cushioned with closed-cell polypropylene, wrapped, and sealed bearing "Fragile" and "Handle with Caution" labels. The samples were shipped to Kansas City on August 4, 1976, and returned to GSA on September 3, 1976.

On the basis of this record, we are unable to conclude that GSA acted improperly either in handling or evaluating the Clauss bid sample. The record shows only that Clauss submitted two bid samples, that the one selected for testing was found to be unacceptable after it was handled in accordance with established procedures which appear to be reasonably designed to afford adequate protection to the samples, and that the unacceptability of the shears was due to certain damage presumably incurred at some point after manufacturing. While it cannot be said with certainty that the shears were not damaged while in GSA's possession, neither can it be concluded that the damage resulted from mishandling by GSA. Accordingly, we find that the protester had not sustained its burden of proving its allegation that GSA was responsible for the damage. Cf. 51 Comp. Gen. 583 (1972). Accordingly, and since the bid sample, as tested, was not acceptable, the Clauss bid was properly rejected. 34 Comp. Gen. 180 (1954); Boston Pneumatics, Inc., B-181760, November 15, 1974, 74-2 CPD 265.

As for Clauss' complaint that it was not permitted to comment on the test results before award was made to Kingshead, GSA Procurement Regulations (GSPR) specifically prohibit disclosure of

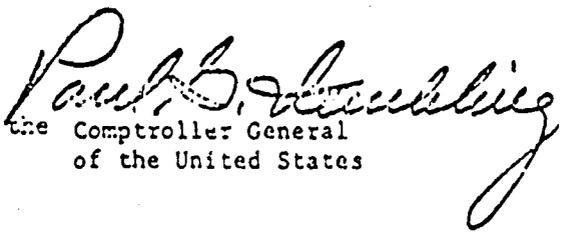
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inspection or test data prior to award. 41 C.F.R. 5A-2.408-71(b).
The validity of this regulation has been upheld. R & O Industries, Inc., 53 Comp. Gen. 810 (1974), 74-1 CPD 221.

The protest is denied.


For the Comptroller General
of the United States