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Decision

Matter of: ATD-American Co.

File: B-275926

Date: January 31, 1997

DECISION

ATD-American Co. (ATD) protests the award of a contract to BTB Trading, Inc., under request for proposals (RFP) No. 1PI-R-0606-96, issued by the Department of Justice Federal Prison Industries (UNICOR) for the purchase of various sizes of bleached white sheeting material for the manufacture of sheets, pillowcases, and napkins. ATD protests that the agency incorrectly evaluated past performance and also improperly evaluated price by considering the total prices for the base and option years. ATD also argues that BTB's offer should have been rejected because BTB lacks the financial capacity to perform and cannot meet the solicitation requirement to provide domestic goods.

We dismiss the protest because it does not establish a valid basis for challenging the agency's action under our Bid Protest Regulations. Section 21.1(f), 61 Fed. Reg. 39,039, 39,043 (1996) (to be codified at 4 C.F.R. § 21.1(f)).

The RFP sought proposals for a fixed-price indefinite delivery/indefinite quantity contract for a base year with two 1-year options. The RFP explained that proposals were to be evaluated in accordance with the following criteria:

- (1) Past Performance (50 points)
- (2) Specification and Statement of Work (Technical) (25 points)
- (3) Price (25 points)

Award was to be made to the offeror whose proposal was most advantageous to the government.

ATD's allegation that the agency incorrectly scored the offerors' past performance ratings is factually misplaced. ATD takes the position that because BTB has not supplied the required sheeting under previous federal contracts the RFP requires that its rating be neutral. ATD, while recognizing its own late delivery on its most recent contract, maintains that it has successfully supplied the sheeting under six previous contracts, the majority of which were timely, and concludes, in view of BTB's lack of relevant experience, that ATD was entitled to a relatively higher

rating. In fact, while the RFP requested information on government contracts that were similar to the requirements of this solicitation, it also specifically provided that commercial contracts would be considered if the offeror had not performed federal government contracts. Consequently, the fact that BTB may not have performed any similar federal contracts simply does not require a neutral rating for BTB. Consequently, there is no basis to conclude that ATD was entitled to a relatively higher rating than BTB.

The protester's contention that the agency improperly evaluated prices by including the base year and all option years is similarly based on a misunderstanding of the solicitation evaluation criteria. ATD argues that only the base year price should be considered because BTB is an unproven contractor, and UNICOR may decide not to exercise the options because unproven contractors often fail to earn the right to perform beyond the base year. However, the RFP included the standard "Evaluation of Options" clause, set forth at Federal Acquisition Regulation (FAR) § 52.217-5, which states that the government contemplates evaluating offers by adding the price for the base period and options years. Consequently, the price evaluation was in accordance with the RFP criterion, and there is no basis to consider only the base year price, as ATD would require.

With respect to ATD's allegations that BTB lacks the financial capacity to perform and that BTB must intend to provide UNICOR with non-conforming, non-domestic sheeting material because BTB's proposed prices are so low, the simple answer is that an allegation that an offeror has submitted a below-cost offer is an issue our Office will not consider. There is no prohibition on submitting a below-cost offer, and our Office does not review an agency's affirmative determination of responsibility, i.e., that an offeror can perform a contract at the offered price, absent circumstances not present here. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. In short, ATD's submission does not establish a valid basis for protest.

Accordingly, the protest is dismissed.

Comptroller General
of the United States