



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Lance Ordnance, Inc.

File: B-281342

Date: January 26, 1999

Nancy M. Camardo, Esq., and Joseph A. Camardo, Jr., Esq., Joseph A. Camardo Law Office, for the protester.

Richard P. Castiglia, Jr., Esq., Patrick K. O'Keefe, Esq., and Thomas C. Papson, Esq., McKenna & Cuneo, for Fireworks by Grucci, an intervenor.

Craig E. Hodge, Esq., and Terese M. Harrison, Esq., Department of the Army, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that awardee received an unfair competitive advantage over other offerors because the awardee leases facilities at the Radford Army Ammunition Plant pursuant to the Armament Retooling and Manufacturing Support Initiative is denied where the record shows that the awardee: leases the facilities not from the government, but from a prime contractor; pays fair market rental value for the facilities; and has not received an unfair advantage from Army expenditures necessary to make the facility habitable for the life of the awardee's 10-year lease, which began before this solicitation was issued, and will extend beyond performance of this contract.

DECISION

Lance Ordnance, Inc. protests the award of a contract to Fireworks by Grucci by the Department of the Army, pursuant to request for proposals (RFP) No. DAAA09-98-R-0068, for the manufacture and delivery of 420,400 ground burst projectile simulators and 212,600 hand grenade simulators. Lance argues that Grucci received an unfair competitive advantage through its proposed use of government facilities at the Radford Army Ammunition Plant, in Radford, Virginia, and that the Army conducted an unreasonable evaluation of Grucci's past performance.

We deny the protest.

The RFP, issued April 2, 1998, anticipated award of a fixed-price contract to the offeror whose proposal represented the best value to the government. The RFP

identified two evaluation factors--past performance and price, and advised that past performance would be slightly more important than price. RFP, Amend. 0001, § M-1. This procurement was reserved for small business participation only.

The Army received six proposals in response to the RFP, with prices and past performance ratings¹ as set forth below:

OFFEROR	PRICE	PAST PERFORMANCE RATING
Offeror A	\$ 4.7 million	Neutral
Offeror B	\$ 4.8 million	Unsatisfactory
Fireworks by Grucci	\$ 5.0 million	Excellent
Lance Ordnance	\$ 5.4 million	Excellent
Offeror C	\$ 5.6 million	Excellent
Offeror D	\$ 7.9 million	Good

Source Selection Statement, Sept. 10, 1998, at first and second unnumbered pages. Based on the past performance ratings of the two lowest-priced offerors, the contracting officer concluded that the proposal submitted by Grucci offered the best value to the government. Id. at third unnumbered page. Lance's protest followed.

Lance argues that Grucci received an unfair price advantage because Grucci proposed to use facilities at the Radford Ammunition Plant, which were not made available to other offerors. According to Lance, the Army should have either adjusted Grucci's price to compensate for the competitive advantage, or advised other offerors of the availability of space at the arsenal.

¹The past performance ratings shown in this decision are derived from separate ratings assigned for each of two past performance subfactors; the evaluation materials did not include a combined rating. Ultimately, the past performance ratings are not relevant to Lance's protest because although the Army report addressed in detail the agency's decision to rate Grucci's past performance as excellent, Lance elected, in its comments, not to reply to the agency's explanation. Accordingly, Lance has provided our Office with no basis to reject the agency's past performance rating for Grucci. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 8 n.8.

As Lance contends, it is a fundamental principal of government procurement that competition must be conducted on an equal basis; that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Meridian Management Corp.; Consolidated Eng'g Servs., Inc., B-271557 et al., July 29, 1996, 96-2 CPD ¶ 64 at 5. Based on our review of the record, however, we do not agree that Grucci has received an unfair advantage over other offerors by virtue of its lease at the Radford Ammunition Plant.

Grucci leases space at the Radford Ammunition Plant pursuant to the Armament Retooling and Manufacturing Support (ARMS) Initiative, authorized by the ARMS Act of 1992, 10 U.S.C.A. § 2501 (West Supp. 1998) (Notes). From fiscal year 1993 through 1998, this Act authorized the Army to enter into prime contracts for the operation and management of unused or underused Army ammunition production facilities. Id. § 194(a)(1). The prime contractor was permitted to negotiate and enter into multiyear leases with other contractors for the commercial use of the facilities. Id. § 194(a)(2).

Grucci learned of the availability of space at the Radford Ammunition Plant in early 1995 from advertisements and notices widely distributed to industry. Affidavit of Felix J. Grucci, Dec. 9, 1998, paras. 3-6. After contacting the Army's prime contractor, Alliant Techsystems, Inc., about leasing space at the underutilized facility, Grucci and Alliant jointly prepared a proposal to the Army for Grucci's commercial use of certain Radford buildings. The proposal estimated that improvements and repairs of approximately \$1.5 million would be necessary to render the buildings habitable for commercial use. Concept Proposal, June 2, 1995, at 2. On September 30, 1995, the Army approved the proposal, and agreed to make the requested improvements. On March 1, 1997, Grucci and Alliant entered into a facility use agreement for a period of 10 years, under which Grucci is to pay Alliant a total of \$950,000 (which, the parties agree, equals \$3.90 per square foot), plus utilities, security costs and general maintenance expenses. Grucci is one of 20 ARMS Initiative tenants at Radford.

The essence of Lance's complaint is that Grucci is receiving an unfair competitive advantage over other offerors by its tenancy at the Radford Ammunition Plant. Based on our review of the record here, we conclude that Lance's assertions are not supported by the results of the competition, and that Lance has misunderstood the facts surrounding Grucci's lease. First, Lance's claims of unfair price advantage are undercut by the proposed prices received. Grucci did not submit the lowest proposed price for the explosive simulators here, and, in fact, its proposed price was squarely in the middle of the range of submitted prices.

Second, Grucci's lease of these facilities was not tied to this solicitation. Grucci leased the facilities approximately 18 months prior to the date this solicitation was issued, and its lease extends for a total of 10 years--well beyond the performance period of this contract. In addition, Grucci's lease is not from the government but

from a prime contractor for the government. The prime contractor established its lease prices based on an appraisal intended to discern the fair market rental value of the property. Thus, on its face, Grucci is receiving no more benefit from the Army than it would receive if it rented space in an entirely commercial industrial park.

In its comments on the agency report, Lance argues that our Office should overturn the Army's selection of Grucci because there is no contemporaneous evidence in the record that the Army considered whether Grucci received an unfair advantage here.² In addition, Lance argues that the appraisal used by the prime contractor fails to establish a fair market value for the Grucci-leased property, and that Grucci was unfairly benefitted by improvements made to the property in anticipation of its occupancy.

The contracting officer's statement provided with the agency report explains that the Army did not conduct an analysis of whether there was an unfair advantage to Grucci because the lease was a matter between Grucci and the prime contractor implementing the ARMS Initiative. Since, as discussed below, there is no evidence of an unfair advantage from the Army, there was no requirement for the Army to look beyond the terms of the lease, as Lance contends.

With respect to Lance's challenges to the appraisal, and its contentions that the improvements made to the property were solely for Grucci's benefit and provided Grucci an unfair advantage, we reviewed each of Lance's arguments and conclude that there is no evidence in the record of an unfair competitive advantage.

For example, Lance argues that the appraisal was flawed because of disclaimers regarding the unique nature of the Radford Ammunition Plant properties which could have a positive or negative affect on the appraisal's assessments. Real Estate Market Survey, Transmittal Letter, July 13, 1995, at 1. Among other things, the appraisal notes the possibility of explosion hazards at the site, *id.*, presumably as a basis for distinguishing between the Radford Ammunition Plant buildings and other

²This argument differs from Lance's initial contention that the Army's evaluation violated Federal Acquisition Regulation (FAR) § 45.201, which requires agencies to quantify the advantage accruing to any offeror possessing government-furnished equipment or government property, in order to allow offerors to compete on a common basis. *Suncoast Scientific Inc.*, B-240689, Dec. 10, 1990, 90-2 CPD ¶ 468 at 6. However, as the Army pointed out in its response to the protest, FAR Part 45, on its face, does not apply to property provided pursuant to statutory leasing authority. FAR § 45.000. Since the ARMS Initiative is clearly a statutorily-based leasing program, FAR Part 45 does not govern this situation. Nonetheless, the inapplicability of FAR Part 45 does not bar a protester's general claim of unfair advantage.

more traditional commercial sites. While Lance is correct about the presence of the disclaimer, and is correct in observing that the facts requiring inclusion of the disclaimer could have consequences on the appraisal values reached, the disclaimers appear to be a reasonable caveat for a commercial appraiser to add to a report about unique properties such as these. Simply put, there may be no clear commercial counterpart for properties such as these located within the midst of an aging and underutilized ammunition plant. In our view, given the unique circumstances of leasing property within an ammunition plant, we find nothing inherently flawed about the commercial appraisal used by Alliant to set the rental rates for Grucci's lease.

A second example of Lance's challenges involves the nature of the improvements made to these buildings before Grucci moved in. As stated above, the Army agreed to spend approximately \$1.5 million to prepare these buildings for occupation, as they were in various states of disrepair. Despite Lance's contention to the contrary, there is little evidence of work done to Grucci's sole benefit; instead, the work identified appears necessary to make the facilities habitable, and to relocate Army equipment. For example, the work includes general repairs to windows, doors, and walls; removing and relocating several types of excess equipment; and installation of meters and additional perimeter fencing.³ Although one item on the worklist arguably supports Lance's claim--installation of contractor equipment--there is no evidence that this work represents a significant effort, and all the other items appear to be necessary for any lessee to use the premises. Accordingly, we see no basis to conclude that Grucci was given an unfair advantage in this procurement by virtue of the improvements made to its Radford Ammunition Plant space at the start of its 10-year lease.

The protest is denied.

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³The worklist of repairs to be financed by the Army is set forth in paragraph 8 of a Mandatory Checklist included within Alliant's Concept Proposal submitted to the Army.