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

**FILE:** B-214700, B-214878 **DATE:** November 13, 1984

**MATTER OF:** Pioneer Recovery Systems, Inc.

**DIGEST:**

1. Multiple bids from more than one commonly owned and/or controlled company may be accepted unless such multiple bidding is prejudicial to the interests of the government or other bidders.

2. Protester challenges another bidder's representation of eligibility as a labor surplus area concern. Since the challenged bidder is not currently in line for award of the labor surplus area portion of the solicitation, our consideration of this issue would serve no useful purpose.

3. Certificates of Independent Price Determination submitted by affiliated, multiple bidders should be regarded as indicating that the prices submitted by them were not discussed or communicated to any other competitor of the multiple bidders or to any prospective bidder other than themselves and that no attempt has been made to induce any other person to submit or not to submit an offer for the purposes of restricting competition.

4. We review affirmative responsibility determinations only when there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have not been met.

5. A determination concerning price reasonableness is a matter of administrative discretion that necessarily involves the exercise of business judgment by the contracting officer. We will not question that judgment unless it is clearly unreasonable or there is a showing of bad faith or fraud.

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6. We are not aware of any requirement that the procuring agency withhold award pending the protester's receipt of the agency's decision on its protest.

Pioneer Recovery Systems, Inc. (Pioneer), protests the Department of the Air Force's (Air Force) intention to award a contract to Irvin Industries, Inc., Gardena, California (Irvin-Gardena), under invitation for bids (IFB) No. F41608-83-B-0251. Pioneer contends that Irvin Industries, Inc. (Irvin), gained an unfair competitive advantage by submitting multiple bids from its Gardena division as well as from its Roxboro, North Carolina, division (Irvin-Roxboro). Pioneer also contends that the submission of multiple bids violated labor surplus area set-aside procedures and rendered Irvin's Certificates of Independent Price Determination false and misleading. In a separate protest against the Air Force's award to Irvin under request for proposals (RFP) No. F41608-83-R-2439, Pioneer challenges the Air Force's affirmative determination of Irvin's responsibility. Pioneer also argues that there was inadequate price competition under the RFP.

Pioneer's protests are dismissed in part and denied in part.

Protest Under IFB-0251

IFB-0251 was issued on November 23, 1983, to obtain 1,900 parachute systems applicable to the BDU-38/B practice bomb. The requirement was solicited as a three-part set-aside with 634 each for the open competition portion and 633 each for the small business set-aside and labor surplus area (LSA) set-aside portions.

A total of five bids were submitted. Separate bids were submitted by Irvin-Roxboro and Irvin-Gardena, although the two locations of Irvin Industries are affiliated under the same corporate structure. The Irvin-Gardena bid was the lowest received while Pioneer's bid was second low. Neither of these bids represented that work would be performed in a labor surplus area. The third low bid was from Irvin-Roxboro, which is located in an LSA, and represented that the bidder qualified for LSA preference.

Pioneer contends that the two Irvin bids were submitted after consultation between the two divisions and that this constituted collusive bidding.

It is not unusual for an individual or individuals to submit multiple bids on behalf of more than one commonly owned and/or controlled company where legitimate business reasons for such multiple bidding exist. 52 Comp. Gen. 886, at 898 (1973). The general rule is that multiple bids may be accepted unless such multiple bidding is prejudicial to the interests of the government or other bidders in which case it is clear that the reason for multiple bidding was not legitmate. See 51 Comp. Gen. 403, at 405 (1972).

Pioneer contends that Irvin's submission of multiple bids was prejudicial to the interests of other bidders because two of the five bids were submitted by Irvin and that firm, therefore, allegedly had an increased possibility of receiving the award. Pioneer cites our decision, Atlantic Richfield Company, 61 Comp. Gen. 121 (1981), 81-2 C.P.D. ¶ 453, for the proposition that bids submitted by commonly owned companies in response to the same solicitation must be rejected where there is a lack of true price competition and where there is the increased mathematical probability of affiliated bidders receiving an award.

We do not agree with Pioneer's analysis of Atlantic Richfield Company, supra. That case involved the sale of natural gas. Since there were tie bids, award was made by lottery as provided in the solicitation. We sustained the protest against the award to two affiliated concerns because we found that other bidders were prejudiced. We distinguished that case from one where award would be made to two affiliated firms as a result of a truly competitive sale, that is, a sale in which award was to be made on the basis of the highest price bid, and not on the basis of chance, as is the case in a lottery.

We concluded in Atlantic Richfield Company, supra, that bids submitted by commonly owned companies should be rejected when bidders could obtain an unfair advantage by submitting such bids. The unfair advantage in that case was "the lack of true price competition and the increased mathematical probability of bidders' receiving an award by lottery when affiliated bidders participated in the drawing." Protimex Corporation, B-204821, Mar. 16, 1982, 82-1 C.P.D. ¶ 247.

This was not the case here. There was no lottery; award was based on price, not chance. In short, the award was based on competition, and the objections we found to the awards to affiliated bidders in Atlantic Richfield Company do not pertain here. Since Pioneer had a fair opportunity

to submit a lower bid, it was not prejudiced by the separate bids from the two Irvin divisions. In fact, since the bid submitted by Irvin-Gardena was the lowest received, it would have been prejudicial to the interest of the government to reject such an offer. 39 Comp. Gen. 892, 894 (1960).

Pioneer also challenges Irvin-Roxboro's representation of eligibility as a labor surplus area concern in its bid. Pioneer contends that since the two Irvin bids were submitted by affiliated concerns, Irvin should be eligible to receive the LSA set-aside portion "only if a substantial portion of the combined Irvin-Gardena and Irvin-Roxboro effort under the contract were to be made in a labor surplus area."

We need not consider this issue. Under the terms of the solicitation, Irvin-Roxboro was only third in line to receive an award of the LSA portion according to the Air Force. Since Irvin is not currently in line for this award, our consideration of this issue at this time would serve no useful purpose. See E.J. Murray Company, Inc.; W. M. Schlosser Company, Inc., B-212107, B-212107.2, Mar. 16, 1984, 84-1 C.P.D. ¶ 316.

Pioneer also contends that the Certificates of Independent Price Determination filed by Irvin-Gardena and Irvin-Roxboro were false because the prices submitted on the two Irvin bids were determined jointly by Irvin's headquarters office. Since prices were not independently determined, Pioneer argues that the Irvin bids should be declared ineligible for award.

We have held that the Certificates of Independent Price Determination submitted by multiple bidders should be regarded only as indicating that the prices submitted by them were not discussed with or communicated to any competitor of the multiple bidders or to any prospective bidder other than themselves, and that no attempt has been made to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition. 51 Comp. Gen. 403, at 405, supra. Wilkerson Manufacturing Company, B-206334, Feb. 24, 1982, 82-1 C.P.D. ¶ 165.

It is immaterial whether the prices quoted in the Irvin bid were discussed at the headquarters office before submission since the discussions are allowable under our decisions. But there is no evidence in the record that even remotely suggests that the bidders' prices were otherwise discussed or communicated or that efforts were made to induce other firms to bid or not bid or that there was an attempt to eliminate competition from other bidders.

Protest Under RFP-2439

Pioneer also protests the award to Irvin under RFP No. F41608-83-R-2439. Pioneer contends that Irvin is not responsible and that there was inadequate price competition.

The Air Force reported to this Office that Irvin is a qualified source for the items sought and that Irvin received a favorable preaward survey recommendation. Irvin therefore was found responsible. This is not a matter for this Office to review. We review affirmative responsibility determinations only when there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that a definitive responsibility criterion has not been met. Surgical Instrument Company of America, B-215061, Aug. 6, 1984, 84-2 C.P.D. ¶ 154. Neither exception is applicable here.

Pioneer also argues that the award to Irvin was improper because there was inadequate price competition. Pioneer contends that discrepancies between prices offered by Pioneer and Irvin "indicate that the contracting officer may not have properly analyzed the prices offered and that, therefore, the prices may not be reasonable." As evidence of price unreasonableness, Pioneer notes that some of Irvin's prices exceed those offered by Pioneer by as much as 300 percent and that some other of Irvin's prices are as much as 50 percent lower than Pioneer's prices. Pioneer further contends that there should have been discussions with Irvin and Pioneer to question the discrepancies in unit prices.

The Air Force argues that although there were variations in unit prices, Irvin's aggregate price was 19 percent lower than Pioneer's. The Air Force also points out that award was made in accordance with the RFP, on an aggregate basis. The Air Force contends that award was based on adequate competition and that prices are reasonable.

We consistently have held that a determination concerning price reasonableness is a matter of administration discretion that necessarily involves the exercise of business judgment by the contracting officer. We will not question that judgment unless it is clearly unreasonable or there is a showing of bad faith or fraud. Espey Manufacturing and Electronics Corporation, B-194435, July 9, 1979, 79-2 C.P.D. ¶ 19. Here, there has been no showing of bad faith or fraud. Also, since offerors on an aggregate award are free to structure their prices in any manner, there was

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no reason to question variations in unit prices and a 19-percent "range" in aggregate prices is not clearly unreasonable.

We also do not agree with Pioneer's contention that discussions should have been held with Pioneer and Irvin. Although, in a negotiated procurement, discussions generally are required to be held with all offerors in the competitive range, there are exceptions to this rule. One exception is where the record shows the existence of adequate price competition to assure that award without discussions will be at a fair and reasonable price, provided that the solicitation advised offerors of the possibility that award might be made without discussions. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 C.P.D. ¶ 396. As we already indicated, the Air Force determined that adequate price competition existed and the RFP informed offerors that award might be made without discussions. Therefore, we see nothing objectionable about the Air Force's decision not to conduct discussions.

Pioneer also contends that award was made to Irvin prior to Pioneer's receipt of notice that its protest had been denied in order to frustrate Pioneer's protest. However, we are not aware of any requirement that the procuring agency withhold award pending the protester's receipt of the agency's decision on its protest.

Pioneer's protests are dismissed in part and denied in part.

for Milton J. Socolar
Comptroller General
of the United States