

DECISION



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

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FILE: B-217499

DATE: January 16, 1985

MATTER OF: Baltimore Electronics Associates, Inc.

DIGEST:

1. Bidder may elect not to charge for certain item and if bidder indicates commitment to furnish item in question--as by inserting "no cost" in bid--its bid is responsive.
2. Protester's allegation--that awardee was able to submit low price on current contract because it was awarded an earlier contract for the same item at a higher price--does not constitute violation of independent price determination requirement in solicitation or provide other basis for challenging propriety of contract award.
3. GAO does not consider allegations of antitrust violations.

Baltimore Electronics Associates, Inc. protests the award of a contract for intercommunications sets to United Chemcon Corporation under solicitation No. M00027-84-B-0087 issued by the United States Marine Corps. We summarily deny the protest in part and dismiss it in part.

The protester first contends that the awardee's bid was nonresponsive because the solicitation required that bidders insert a price for each item offered and Chemcon's bid indicated that first article production would be at no cost to the agency. We disagree. Bidders may elect not to charge the government for certain work. National Mediation Board--Request for Advance Decision, B-209037, Oct. 8, 1982, 82-2 CPD ¶ 323. For a bid to be responsive in such cases, bidders must affirmatively indicate--for example, by inserting in their bids the words "no charge"--that they are committed to provide the goods or services covered

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by the item in question. E.g., Aardvark/Keith Moving Co., B-200680, Mar. 6, 1981, 81-1 CPD ¶ 180. Here, the protester states that Chemcon entered "no cost" in the first article production line item in its bid; it has not shown, therefore, that Chemcon's bid was nonresponsive.

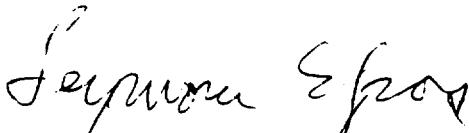
The protester next states that Chemcon's unit price bid on the current contract was substantially lower than Chemcon's unit price bid on an earlier contract for the same items awarded to Chemcon under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982). The protester maintains that the difference in Chemcon's bid prices is evidence that its price on the earlier contract was inflated and is now being used to improperly subsidize Chemcon's current bid. We find this contention to be without merit. The protester has not shown that award of the earlier contract to Chemcon was the basis for its lower bid on the current contract. Moreover, we are aware of no reason why the alleged relationship between the two bids, even if proven, would make award to Chemcon improper. In any event, it is not unusual under the 8(a) program for contracts to be funded in amounts exceeding prices obtainable through unrestricted competition. North American Precis Syndicate, Inc., B-212379, Aug. 4, 1983, 83-2 CPD ¶ 171. Nor are we aware of any prohibition against a firm participating in both 8(a) and open procurements for the same items.

The protester also maintains that Chemcon's submission of a bid lower than its bid on the earlier contract violates section K-2 of the solicitation. That section incorporates Federal Acquisition Regulation, § 52.203-2, 48 Fed. Reg. 42,102, 42,485 (1983) (to be codified at 48 C.F.R. § 52.203-2), which sets forth a certification that the bidder has arrived at its price independently, has not disclosed its price to other competitors and has not attempted to induce another concern either to submit or not submit a bid for the purpose of restricting competition. The requirement for independent price determination contained in this provision is directed at preventing collusive bidding among bidders. See Southern Maryland General Contractors, Inc., 57 Comp. Gen. 277 (1978), 78-1 CPD ¶ 121. Here, we see no basis on which we could conclude that Chemcon's bids, assuming they are related as alleged, violate this provision.

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Finally, the protester contends that Chemcon's submission of its current bid involves an antitrust violation. Our Office does not consider allegations of antitrust violations and any evidence of such violations should be submitted to the Department of Justice by the protester. Terry, Inc., B-213792, Jan. 25, 1984, 84-1 CPD ¶ 119.

The protest is denied in part and dismissed in part.


For The Comptroller General
of the United States