



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Land O'Frost, Inc.  
File: B-225478.2  
Date: March 3, 1987

## DIGEST

1. Protest that awardees' prices are unrealistically low because they do not reflect the costs of compliance with a testing procedure required by the solicitation is denied where contracting officer has determined that awardees are responsible.
2. Where solicitation reserved to the government the right to increase any offeror's award quantity above the maximum share for which it qualified under its industrial preparedness planning (IPP) participation in the event that other offerors' prices could not be determined fair and reasonable, and contracting officer could not determine that protester's price on only item for which it was in line for award was fair and reasonable, contracting officer's award to another offeror of quantities in excess of its IPP allocation is not objectionable.

## DECISION

Land O'Frost, Inc. protests the Defense Personnel Support Center's (DPSC) failure to award it a contract under request for proposals (RFP) No. DLA13H-86-R-8349, for various quantities of different types of thermostabilized pouched meat components of the meal ready-to-eat (MRE) ration. Land O'Frost contends that DPSC made awards to two firms that had submitted unrealistically low prices. We deny the protest.

The RFP, pursuant to the authority of 10 U.S.C. § 2304(c)(3) (Supp. III 1985), restricted competition to planned producers who are participating in the Department of Defense Industrial Preparedness Production Planning Program. The solicitation explained that the extent of an offeror's industrial preparedness planning (IPP) capacity would determine its maximum potential share of the total award

quantities, and that actual award quantities would depend upon the prices offered; no award would be made to an IPP firm offering prices determined to be other than fair and reasonable.

Based on its IPP capacity, Land O'Frost was determined to be eligible for a maximum share of 6,750,000 pouches. Despite its eligibility, Land O'Frost received no awards because other IPP firms offered lower prices on six of the seven items offered by the protester and Land O'Frost's price was not determined to be fair and reasonable on the seventh.

Land O'Frost argues that it received no award because two companies were awarded quantities at unreasonably low prices. According to the protester, these companies, identified as J.R. Wood and International Retort, are new to the MRE program and are thus unfamiliar with the zyglo florescein dye testing procedure required by the solicitation to ensure that the pouches are free of microholes. Land O'Frost notes that after the new testing procedure was instituted in May 1986, it incurred major expense in upgrading its production lines and quality assurance programs to improve its pouch quality. These costs, it claims, are reflected in its prices. Land O'Frost argues that the prices offered by J. R. Wood and International Retort do not reflect the costs of compliance with the zyglo testing and are therefore unrealistically low.

The protester is questioning the ability of these two firms to perform the contracts in compliance with the solicitation's testing requirements at the prices offered. There is nothing in the record to indicate that these firms' offers in any way deviated from the terms of the solicitation. Further, even if the prices offered by these firms were below their performance cost, the submission of such an offer is not illegal and provides no basis for challenging an award of a firm fixed-price contract such as those involved here to a responsible firm. LSL Industries, Inc., B-222588, July 22, 1986, 86-2 CPD ¶ 92. Whether the firms can perform at the price offered is a matter of responsibility. Our Office does not review protests against affirmative determinations of responsibility,<sup>1/</sup> unless either fraud or bad faith on the part of procuring officials is shown or the solicitation contains definitive responsibility criteria which

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<sup>1/</sup> Since both firms received awards they were necessarily determined to be responsible. The ARO Corp., B-222486, June 25, 1986, 86-2 CPD ¶ 6.

allegedly have been misapplied. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1986). Neither exception applies here.

Land O'Frost further observes that some firms were awarded quantities in excess of their IPP allocations while it received no award. The record shows that at least one company, Southern Packaging & Storage Company, received awards which exceeded its IPP allocations. We fail to see anything improper in this, however, since the solicitation specifically reserved to the agency the right to increase any offeror's award quantity above the maximum share for which it qualified through its IPP participation in the event of insufficient eligible offeror coverage or receipt of prices not determined to be fair and reasonable. We are informed that the contracting officer could not determine that Land O'Frost's price on the only item for which it was in line for award was fair and reasonable, and therefore elected to award to Southern quantities in excess of its maximum share.

The protest is denied.

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General Counsel