The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Services Administration--Request for Reconsideration
File: B-227162.2

Date: November 16, 1987

DIGEST

Decision holding that contracting agency failed to show a reasonable basis for splitting contract award between lowest and second lowest priced offerors under solicitation for nonflaming paint is affirmed on reconsideration where agency fails to show any error of law or fact in original decision.

DECISION

The General Services Administration (GSA) requests reconsideration of our decision, Stic-Adhesive Products Co., Inc., B-227162, Sept. 25, 1987, 66 Comp. Gen. ___, 87-2 CPD ¶ 300, sustaining in part and denying in part Stic-Adhesive's protest regarding the proposed method of award under request for proposals (RFP) No. 10PR-XXS-4245, issued by GSA for nonflaming enamel paint. We affirm our decision.

The RFP provided for award of parallel contracts to the two low offerors on each of 10 line items; the low offeror on each item was to be awarded 60 percent of the government's requirements, and the second low offeror was to be awarded the remaining 40 percent. Stic-Adhesive objected to the use of parallel contracting, which it claimed was intended to prevent it from receiving award of the entire requirement for certain items. We found that while parallel awards are not objectionable in principle, GSA had not adequately justified making parallel awards under the RFP at issue. Specifically, in its report on the protest, GSA stated that the prior suppliers of the paint, considered a critical item, had a history of poor performance due primarily to their lack of adequate production capacity to handle large volume orders from the government. In GSA's view, splitting large orders between two contractors through parallel awards would ensure a continuous supply of the paint.

We rejected GSA's rationale for making parallel awards on two grounds. First, we found that the record did not

support GSA's claim that the prior performance problems were the result of large volume orders. Second, we found that even if GSA had a reasonable basis to question the potential offerors' capacity to handle high volume orders, it would be impossible to determine prior to actual receipt of offers whether any particular offeror would be in line for award of multiple items in quantities which might tax its production capacity. As a result, we recommended that GSA revise the RFP to delete the current provision for parallel awards to be made automatically under each item. We also recommended that if GSA wished to retain the option to make parallel awards if the circumstances warranted after receipt of offers, GSA should include a provision in the RFP reserving the right to make parallel awards to other than the lowest priced offerors. We also found that Stic-Adhesive was entitled to recover the costs of filing and pursuing the protest.

In its request for reconsideration, GSA does not disagree with our conclusion that the prior contractors' inadequate production capacity was not the primary cause of their performance problems.1/ In GSA's view, however, it need not demonstrate that the history of poor performance was due to inadequate production capacity; rather, the crux of GSA's position is that the history of poor contract performance for the enamel, regardless of the specific reasons for the performance problems, is sufficient to justify the use of parallel awards in order to ensure a continuous supply of the item. We disagree.

As we stated in our initial decision, parallel awards may be justified where the record shows a history of poor performance for a critical item due to the contractors' inadequate production capacity, since decreasing the quantity called for from individual contractors reasonably would lead to avoiding performance problems due to inadequate production capacity. We see no similar link between parallel awards and improving performance, however, where, as here, the prior performance problems are not primarily related to inadequate production capacity. Under these circumstances, there is no reason to conclude that splitting the awards between two contractors will help ensure that the prior performance problems will not recur, except to the extent that having more than one contractor in any procurement may decrease the overall risk of poor performance. In our view,

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1/ GSA also maintains that it never attempted to justify the parallel awards solely on the basis of inadequate contractor production capacity. We disagree. GSA's report on the protest clearly identified production capacity as the primary cause of the prior performance problems.

that possibility is not sufficient to justify the use of parallel awards.

Further, parallel awards restrict competition by preventing firms from competing for the government's entire requirement. In this case, for example, even though the protester has performed satisfactorily under its prior contract for the enamel, and may have the capacity to supply all of the requirement, it would be prevented by the parallel contracting provisions from receiving an award for GSA's entire requirement, on any of the 10 line items, even if it offered the lowest price. Under the Competition in Contracting Act (CICA) of 1984, 41 U.S.C. § 253(b)(1) (Supp. III 1985), however, a contracting agency may exclude a particular source, which has the capacity to fulfill all of the government's requirement, from a procurement only under the following limited circumstances, where the agency head determines that doing so:

> "(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;
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> "(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or
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> "(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center."

In our view an agency may not exclude a responsible offeror from competing for a portion of a procurement without regard to the above provisions of CICA. GSA does not argue, and there is no indication in the record, that any of these exceptions to full and open competition applies in this case.

Since GSA has failed to show that our decision was based on an error of law or fact, our decision is affirmed.

Milton J. Socolar

for Comptroller General
of the United States