The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Boliden Metech, Inc.

File: B-229861.2; B-229862.2

Date: May 9, 1988

DIGEST

Protest alleging that solicitation for extracting precious metals from electronics scrap unduly restricts competition by restricting type of processing method contractor may use is denied where protester fails to show that contracting agency's technical judgment that restriction is necessary to ensure recovery of optimum amount of precious metal is unreasonable.

DECISION

Boliden Metech, Inc. protests any award under invitation for bids (IFB) Nos. DLA200-88-B-0304 and DLA200-88-B-0305, issued by the Defense Logistics Agency (DLA) for the recovery of precious metals from electronics scrap at various military installations in the United States. Boliden argues that the IFBs unduly restrict competition to the extent that they prohibit the use of the processing method used by Boliden. We deny the protests.

The IFBs, issued on November 17, 1987, call for the award of 1-year fixed-price requirements contracts for the recovery of gold, silver, platinum and palladium from government-furnished electronics scrap such as circuit boards and wires. Bids were due by December 23 and 29. Under the IFBs, the government is to pay the contractor a fee for each pound of scrap processed. After processing, the contractor is to return to the government a quantity of precious metals corresponding to the precious metal content of the scrap; the amount of the recovery is determined by assaying samples of the scrap.

With regard to the processing method to be used by the contractor, the IFBs originally required that all the material furnished for processing be smelted. Under this smelting process, after the contractor determines that the melt is homogeneous and the slag is removed, the IFBs

require that three "dip samples" be taken from the melt at the beginning, middle and end of the pour. These samples are assayed to determine the precious metal content of the scrap. Each sample first is formed into granules, or shot, by slow pouring into a container of water. Each of the three shot samples then is divided into four equal parts. The contractor retains one set of the three samples, two sets are returned to the government, and the fourth set is reserved in a sealed drum in the event it is required to settle a dispute between the contractor and the government. The estimate of the precious metal content to be recovered by the government is based on averages of the assay results of the three samples obtained by the government and the contractor. The IFBs authorize the government to request reprocessing of the entire melt at no additional cost to the government if the assay results of the samples reveal that the melt is not homogeneous.

On December 21, Boliden filed a protest with our Office contending that the IFBs unduly restricted competition by requiring that the scrap be processed by smelting only. Boliden argued that in addition to smelting, the IFBs should have permitted contractors to process the scrap by the granulation method used by Boliden. According to Boliden, the first step in its method is reducing the particle size of the entire lot of scrap by mechanical means rather than melting. A 10 percent sample is taken after the particle size reduction is performed. The sample is then granulated again and another 10 percent sample taken. The second sample (totaling 1 percent of the entire lot) then is incinerated to remove the organic materials, ground to a powder, and sifted through a fine screen. The portion that passes through the screen is blended and sampled for assay purposes; the portion which does not pass through is melted and a sample taken for assay.

After Boliden filed its protest, DLA amended the processing method requirement in both IFBs. In addition to smelting, the amended IFBs permit the contractor to mill the entire lot to pass through a -40 mesh screen, after which samples are to be taken for assay. The IFBs provide that regardless of the processing method used, the entire lot of scrap must be processed to a homogeneous state from which the samples are to be taken. In a submission to our Office dated January 19, 1988, Boliden argues that the IFBs remain unduly restrictive of competition.1/ Boliden argues that although

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1/ In view of the amendments to the IFBs, we dismissed Boliden's December 21 protests concerning the original IFBs as academic, and treated Boliden's January 19 "supplements" as new protests challenging the IFBs as amended.

the IFBs as amended now permit a non-smelting processing method, the amendments will have no practical effect on competition since it is not economically feasible for any bidder to mill the entire lot to the particle size specified in the IFBs. In comparison, under Boliden's method, the lot is granulated to dimensions of one inch or smaller; only a portion of the sample then taken from the lot is processed to a finer particle size.

In its report on the protests, DLA states that the key requirement to ensure that the optimum amount of precious metal is recovered from the government's scrap is processing the entire lot to a homogeneous state. According to DLA, different scrap lots consist of a variety of different components with varying precious metal content. When a lot is sent for processing, DLA has no basis to estimate the precious metal content of a particular lot; individual lots, although consisting of the same general types of components, can differ significantly due to the mix of components in any given lot. Accordingly, DLA maintains that the restriction in the IFBs on the processing method which may be used is necessary to ensure the optimum recovery of precious metals.

The record shows three factors relevant to DLA's decision to restrict the processing methods contractors may use. First, in 1986 Boliden was awarded two contracts for recovering precious metals using its granulation method.2/ DLA found that the amount of precious metal recovered under the Boliden contracts was significantly lower than the amount recovered under contracts using the smelting method. Second, a 1985 experiment involving granulation conducted by Handy & Harman, another firm which processes scrap, produced widely varied results among the samples. Finally, under a 1987 contract involving 100,000 pounds of scrap, Boliden granulated the entire lot and then extracted a 10 percent sample for further processing and assay. A contract to process the remaining 90 percent then was awarded to another firm, SIPI Metals, which reduced the entire amount it received to a homogeneous state and then took samples for assay. Based on the assay results, the Boliden contract resulted in higher recoveries than the SIPI Metals contract for all four precious metals. DLA maintains that the results of the contracts, awarded by a field activity and not "officially sanctioned or endorsed" by DLA Headquarters, are scientifically and statistically invalid.

2/ DLA maintains that the contracts were awarded by a DLA field activity in contravention of a direction from DLA headquarters that no contracts were to be awarded to firms using the granulation method.

The protester argues that the amended IFBs are unduly restrictive because they preclude the protester's methodology, an approach that the protester asserts is "proven daily" and was validated by the results of the 1987 contracts.

Where, as here, a solicitation requirement is challenged as unduly restrictive of competition, the initial burden is on the contracting agency to establish prima facie support for its contention that the restriction is necessary to meet its minimum needs. Repco, Inc., B-227642.3, Nov. 25, 1987, 87-2 CPD ¶ 517. Once the contracting agency establishes support for the challenged requirement, the burden shifts to the protester to show that the requirement is unreasonable. Id. The determination of the government's minimum needs, the best methods of accommodating them, and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials, who are most familiar with the conditions under which the supplies or services are to be used. M. C. & D. Capital Corp., B-225830, July 10, 1987, 87-2 CPD ¶ 32. Where technical supplies or services are involved, the contracting agency's technical judgments are entitled to great weight; we will not substitute our judgment for the contracting agency's unless its conclusions are shown to be arbitrary or otherwise unreasonable. Hydro-Dredge Corp., B-215873, Feb. 4, 1985, 85-1 CPD ¶ 132.

Here, we believe that DLA has made a prima facie showing that the processing requirements in the IFBs are reasonably related to its minimum needs. As explained above, the amount of precious metals the government recovers from a lot of scrap is based on samples taken from the lot which are assayed for precious metal content. DLA's position is that, to ensure that the samples are representative of the lot and thus accurately reflect the precious metal content, the entire lot must be reduced to a homogeneous state by smelting or milling to a fine particle size. Although Boliden disagrees, arguing that the samples taken for assay under its method are as representative of the entire lot as under the methods required by the IFBs, on this record we cannot conclude that DLA's technical judgment--that the approaches specified in the IFBs are more reliable than the protester's method--has been shown to be unreasonable. In this respect, we think the results of the contracts and studies on which DLA relies simply are inconclusive as to the reliability of Boliden's method--in one instance, the Boliden approach produced a lower yield than DLA's specified method, while in another instance the yield was greater. Under the circumstances, we cannot fault DLA for insisting on the method that it has found to be reliable.

Accordingly, the protest is denied. However, we are recommending to DLA that it continue its efforts to conclusively determine the viability of the Boliden approach.

James F. Hinchman
General Counsel