



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tennessee Apparel Corp.

File: B-236346

Date: December 5, 1989

DIGEST

Protest of contracting agency's proposed award of a contract for apparel to particular source to serve industrial mobilization purposes is denied where awardee's position would thereby be strengthened and protester was reasonably considered by contracting agency to be ineligible for award given its delinquent production status on current contracts.

DECISION

Tennessee Apparel Corp. protests the proposed award of a contract to Sidran, Inc., for 62,796^{1/} men's blue dress jumpers by the Defense Personnel Support Center, DLA, under request for proposals (RFP) No. DLA100-89-R-0397. Tennessee alleges that DLA improperly directed the award to Sidran as a mobilization base producer.

We deny the protest.

The present solicitation for the jumpers, which are part of the initial uniform issue, was issued pursuant to a justification for "other than full and open competition" through a contract directed to Sidran in order "to maintain [the] mobilization base" for the item. Specifically, the contracting officer found that the use of the mobilization base authority was necessary in order to maintain "properly balanced sources of supply" in the interest of industrial mobilization and that the quantity of jumpers to be procured was the "minimum . . . needed to maintain a mobilization base."

^{1/} This quantity of jumpers represents Defense Logistics Agency's estimate for the need for this item for the 1990 fiscal year. The protester has not questioned DLA assertion that this quantity is too small to be economically split into multiple awards.

In the justification the contracting officer stated that there were four known past suppliers of the item, including Sidran and Tennessee, both of which have "Industrial Preparedness Planning" agreements with DLA. One of the other suppliers was currently debarred from receiving contract awards and the fourth firm was "defunct." The contracting officer also stated that Tennessee was 3 months delinquent on Tennessee's last contract for the jumpers, awarded to the company as the result of a competition in which, according to DLA, only Tennessee emerged as a "viable producer." In addition, Tennessee was considered delinquent on 3 of its other 10 contracts for military apparel, which the contracting officer also considered indicative of an "overloaded production capacity."

As to Sidran, the contracting officer noted that in April 1988, the company had received a non-competitive contract for jumpers and was expected to complete it in 1989.^{2/} After also finding that an award to Sidran at the anticipated contract price would be "fair and reasonable," DLA's contracting officer considered it to be in the "best interest of the Government" to direct the award to Sidran to "ensure continuity of production in order to meet the Government's needs, as a true viable competitive base has not been established."

Tennessee primarily argues that a directed award to Sidran will not enhance the mobilization base because Tennessee will shut down its production line for this item when its own contract expires, leaving "only one inexperienced source [Sidran] for the jumpers." Tennessee also asserts that its production capacity was not "overloaded," but that "many of the delays [which Tennessee has experienced under its 1988 jumper contract] were caused by [DLA]," principally by alleged failures to timely provide government-furnished material.

Under the Competition in Contracting Act of 1984 (CICA), military agencies have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item in the interest of the national defense (See 10 U.S.C. §§ 2304(b)(1)(B) and 2304(c)(3) (1988)). Agencies need not obtain full and open competition where the procurement is conducted for industrial mobilization purposes and they may use other than competitive procedures where it is necessary to award the

^{2/} There is no indication that Sidran has experienced any significant delays on the contract or that Sidran's production capacity is "overloaded" in any way.

contract to a particular source or sources. Urdan Indus., Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557. Further, decisions as to which producers of a particular item must be kept in active production in order to ensure emergency preparedness is a judgment which our Office will question only if the evidence convincingly demonstrates the agency has abused its discretion. Propper Int'l, Inc., B-229888; B-229889, Mar. 22, 1988, 88-1 CPD ¶ 296. We limit our standard of review in these cases because the normal concern of maximizing competition is secondary to the needs of industrial mobilization. Id.

We consider that the justification does contain a sufficient rationale for directing the award to Sidran. Of the two potential sources which the agency has identified for this item, one--the protester--was experiencing delinquencies on its contract for the jumper as well as on other contracts. Although Tennessee argues that "many" of the production delays it has experienced were caused by DLA, we view this statement as effectively conceding that at least some delays were attributable to the protester. The only other viable producer, Sidran, was soon to complete its contract for the jumpers. In order to maintain continuity of supply for this basic uniform item, and to increase the sustained rate at which Sidran could produce the item, it was determined to direct the award to that firm.

Tennessee also argues that a directed award to Sidran will not ultimately enhance the industrial mobilization base because, if it is not awarded this contract, Tennessee will abandon future production of the jumpers and may not be able to continue the employment of all those skilled in the jumpers' manufacture. In this regard, DLA notes that Tennessee currently has about 10 DLA apparel contracts, ranging from men's dress trousers to women's white slacks, and that the company's work force remains active under these contracts. Of course if Tennessee decides to forego competing for any future jumper contracts that is its own decision, but we cannot fault DLA for refusing to accept at face value Tennessee's present claim that it will do so.

Given all these circumstances and given that Sidran was soon to be finishing its jumper contract without any indication of delinquencies, we conclude that the contracting officer properly justified the award to Sidran not only to

strengthen Sidran's position as a mobilization base producer but to ensure the timely completion of the contract for this critical item.

The protest is denied.

for Seymour E. Hinchman
James F. Hinchman
General Counsel