

Vickers



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Valentec Kisco, Inc.
File: B-238359
Date: May 11, 1990

Brian J. Donovan, Esq., Jones & Donovan, for the protester. Craig E. Hodge, Esq., and David C. Defrieze, Department of the Army, for the agency. James Vickers, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against determination by agency not to make inspection equipment located in mobilization base contractor's facility available to other offerors but instead to apply rental evaluation factor is denied as application of rental evaluation factor is proper to equalize competitive advantage and retention of equipment to support other mobilization based contracts was reasonable.
2. Allegation by protester who did not submit a proposal that awardee's price is unreasonable is dismissed because protester is not an interested party to raise that allegation.

DECISION

Valentec Kisco, Inc., protests the Army's failure to supply as government furnished equipment (GFE) chamber gages under request for proposals (RFP) No. DAAA09-89-R-1349, issued by the agency, for the conversion of 149,134 M150B1 cartridge cases into M115B1 cartridge cases. The cartridge case is a component of the M724 cartridge, used by many types of battle tanks.

The protest is denied in part and dismissed in part.

Under the terms of the RFP, the contractor is to provide a chamber gage which is a piece of inspection equipment. The government owns three chamber gages which are in the

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possession of Norris Industries, Inc. (NI), the only mobilization base planned producer of M115B1 cartridge cases. The RFP, as amended, stated that the inspection equipment would not be made available outside the current mobilization base and that a rental evaluation factor would be used in evaluating the proposal of the mobilization base offeror.

Kisco argues that because of the time and expense required to fabricate the required chamber gage, any offeror other than NI is placed at such a competitive disadvantage that the solicitation results in a de facto sole source procurement. Kisco contends that the agency adjustment figure of between \$1,500 and \$4,300 is inadequate as the cost of fabricating one chamber gage is \$20,000 and that it would take 20 weeks lead time to fabricate a gage which is beyond the time period stated in the solicitation for the delivery of the first article items.

The regulations provide that the government shall offer special test equipment it owns to prospective contractors if that will not disrupt other programs of equal or higher authority. Federal Acquisition Regulation §§ 45.306-1 and 45.307-1.

The agency reports that the three chamber gages it owns at NI's facility are all needed for the mobilization contracts NI performs. One gage is used by NI for inspection purposes while the other is used by government inspection personnel; the third is kept in reserve to avoid production delay should either of the other two gages break down or need recalibration. The Army states that allowing one of the gages out of NI's facility presents an unacceptable risk of production delays and concludes that the readiness of the M115B1 mobilization line is more important than the acquisition of the case conversions under the RFP.

Kisco disputes the Army's position that the gages cannot be moved from NI's facility because of the mobilization requirements and argues that the United States is not in a mobilization or national emergency posture and points out that the M115B1 cartridge is only used as training ammunition.

Kisco, in essence, disagrees with the Army's determination that the M11B1 cartridge is properly a mobilization base item and that the gages are needed by NI to maintain the mobilization base production line. However, decisions as to which producers and what items should be included in mobilization base procurements and the restrictions necessary to meet the needs of industrial mobilization

involve complex judgments that are generally best left to the discretion of the military agencies. See Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 CPD ¶ 186. Our Office will question these decisions only if the record convincingly shows that the agency has abused its discretion. Martin Elecs., Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504.

We find that the Army's decision to retain the gages at NI's facility under the industrial mobilization program to be adequately justified. The conversion of the M150B1 cases to the M115B1 is not itself a mobilization base requirement. However, the production of new M115B1 cases under NI's other contracts is under the mobilization program and it is under that program that the gages are needed. The decision to retain the gages at NI's facility reflects the Army's judgment as to what is required to maintain the mobilization base in a state of readiness and, while the protester speculates that NI has no current need for the gages, it has not shown that the agency's judgment to the contrary is without foundation. Further, the fact that the ammunition is used for combat training purposes does not, as far as we can determine, have any impact on whether the cartridge case is a proper mobilization base item.

Also, while the protester argues that the RFP rent evaluation factor based on a cost of from \$1,500 to \$4,300 is inadequate to equalize NI's competitive advantage, it has provided no support at all for its estimate that the gage will cost \$20,000 and take 20 weeks to make. Therefore, we have no basis upon which to question the Army's use of the evaluation factor for NI's possession of the government-owned gages or its estimate that the fabrication of the gage could be completed within 4 to 6 weeks. See Riegel Textile Corp., B-211196, Sept. 19, 1983, 83-2 CPD ¶ 343.

While we recognize that NI may enjoy a competitive advantage because of its possession of the Army's gages, that advantage is based on a proper determination that NI must retain the gages in connection with its status as a mobilization base producer; NI's advantage is not the result of an improper preference or unfair action by the contracting agency. It therefore provides no basis for objection. See S.T. Research Corp., B-233309, Mar. 2, 1989, 89-1 CPD ¶ 223.

Finally, Kisco challenges the reasonableness of NI's price and the alleged waiver by the agency of cost and pricing data. Since we have decided that the Army could properly allow NI to retain the chamber gages and Kisco argues that it cannot compete under those circumstances and has in fact

chosen not to submit a proposal under the RFP, it is not an interested party entitled under our Bid Protest Regulations to raise arguments concerning NI's proposal. See 4 C.F.R. § 21.0(a) (1989).

The protest is denied in part and dismissed in part.

for Ronald Berger
James F. Hinchman
General Counsel