

K. Gilhooly



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pertex Textile Products, Inc.

File: B-240052

Date: October 19, 1990

John E. Menechino, Jr., Esq., Smith, Currie & Hancock, for the protester.
Roger D. Waldron, Esq., General Services Administration, for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee incorrectly listed and certified its place of performance concerns a matter of responsibility. The General Accounting Office will not review the contracting officer's affirmative determination of responsibility absent a showing of possible bad faith or fraud or misapplication of definitive responsibility criteria.
2. Agency reasonably found awardee offered its most favored customer price on Federal Supply Schedule Contract.

DECISION

Pertex Textile Products, Inc. protests the General Service Administration's (GSA) award of a contract to Uniforms Manufacturing, Inc. (UMI), under request for proposals (RFP) No. 7FXG-E4-89-8409-B, a multiple-award Federal Supply Schedule (FSS) solicitation for special purpose clothing. Pertex contends that UMI incorrectly listed and certified its place of performance, and incorrectly stated its most favored customer price.

We dismiss the protest in part and deny it in part.

GATAG/142495

The RFP contained 36 Special Item Numbers (SIN). GSA awarded a contract to UMI for SINS 301-1 through 301-6, 301-16, 301-21 and 301-23 through 301-26. Pertex did not submit an offer on, and thus was not in line for award of, any but one of the items for which UMI was awarded a contract, i.e., SIN 301-23, disposable coveralls. Pertex is therefore an interested party only for purposes of protesting this one item. See Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 CPD ¶ 230.

Pertex protests that UMI improperly listed and certified its place of performance. According to Pertex, UMI indicated that the place of performance of the contract would be at its office, while the actual manufacture of the supplies will take place at an undisclosed subcontractor's manufacturing facilities.

UMI's proposal listed its place of performance as "UMI 40 W. Howard Pontiac, Michigan, Oakland County," and listed itself as the operator of the plant. GSA states that UMI completed all sections of GSA Form 3503, Representations and Certifications, and GSA has no reason to question UMI's certification.

Pertex's allegations concerning UMI's place of performance relate to UMI's responsibility. See Comprehensive Health Servs., Inc.--Recon., B-236266.5, Apr. 10, 1990, 90-1 CPD ¶ 376. Here, the contracting officer has made an affirmative determination of UMI's responsibility. We will not review such a determination absent a showing that it may have been made fraudulently or in bad faith or that definitive responsibility criteria have not been met. 4 C.F.R. § 21.3(m)(5) (1990). None of the exceptions are applicable here; Pertex has not alleged fraud or bad faith on GSA's part.^{1/} Thus, this protest basis is dismissed.


Pertex also alleges that UMI's offer should be rejected because UMI incorrectly stated that it was offering its most favorable price to the government. The record shows that UMI offered a basic discount of 30 percent from its catalog price on SIN 301-23, a discount which was higher than that which UMI stated it provided to its most favored customers. Similarly, UMI offered superior prompt payment discount, aggregate sales discount, and delivery terms to those it stated were provided

^{1/} Indeed, Pertex's initial protest contained only the bare allegations that UMI falsely certified its place of performance and intended to subcontract the work.

to its most favored customers. In its best and final offer, UMI certified "that all discount and marketing data including sales data furnished GSA during the course of negotiation is accurate, complete and current." GSA considered the certification accurate and complete in the absence of evidence to the contrary.

Pertex furnished no evidence in support of its allegations about UMI's pricing in its initial protest letter. In comments on the agency report, Pertex attached UMI's offers to city governments which it alleges were less than the discounted price offered to GSA for similar items. However, none of the offers concerns the SIN at issue in this protest. See Baxter Healthcare Corp., B-238306, May 14, 1990, 69 Comp. Gen. ___, 90-1 CPD ¶ 471 (agency may not reject an offer for an item on a multiple award FSS contract based on evidence that offers on other items did not propose the most favored customer price). Therefore, we find that GSA had a reasonable basis to find that UMI offered its most favored customer price.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel