

Me Auliffe
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: All Points International, Inc.

File: B-243901

Date: August 5, 1991

Thomas A. Larson, Esq., Briggs and Morgan, for the protester.
Karen R. O'Brien, Esq., Department of the Army, for the
agency.

Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protester was properly found nonresponsible where contracting officer reasonably questioned firm's ability to comply with RFP's short delivery schedule based upon information obtained during a negative preaward survey. The contracting officer was not required to afford the offeror the opportunity to explain or otherwise defend against the survey information or to advise the firm of his responsibility determination in advance of the award.

DECISION

All Points International, Inc. protests the rejection of its low-priced proposal and the award of a contract to International American Products, Inc. under request for proposals (RFP) No. DASA01-91-R-0062, issued by the Army for 1,000 portable pressure washers, and related training, to clean military equipment used in Operation Desert Shield/Storm. All Points principally protests that the contracting officer erroneously questioned the protester's capability to comply with the RFP's delivery schedule and thus wrongfully determined that All Points was nonresponsible. The protester also contends that the contracting officer improperly failed to advise All Points of any negative information relating to its responsibility and did not afford the protester the opportunity to explain or defend against that information.

We deny the protest.

The RFP, as amended, contemplated the award of a firm, fixed-price contract for 1,000 portable pressure washers (with the option to purchase 500 additional washers) for use by the Army in cleaning the vehicles and equipment used in the Desert Shield/Storm operations. The portable pressure washers inject cleaning compounds and disinfectant agents into a high-pressure water spray. The Army required these units to clean military equipment prior to its return or redeployment in order to comply with Department of Agriculture sanitation specifications aimed at protecting the safety of United States citizens and agriculture.

The agency considered prompt delivery of the washers critical to meet its sanitation needs and to ensure against any delays in the return or redeployment of equipment and personnel. Section F of the RFP provided for delivery of 1,000 washers within 21 days after receipt of the delivery order--the first 100 washers to be delivered within 10 days of the order, with set increased quantities to be delivered every 2 or 3 days after that date. Section M of the RFP stated that "award will be made to the responsible offeror which proposes the lowest price to the [g]overnment" and that "[r]esponsibility encompasses the offeror's ability to provide items and services meeting the [g]overnment's specifications and requirements within the required schedules." Section L of the RFP reserved the government's right to conduct a preaward survey of the prospective contractors prior to award in order to determine, among other things, the ability to comply with the agency's delivery requirements.

Seven proposals were timely received in response to the RFP by the April 20, 1991, closing date. Four of the proposals were rejected as technically unacceptable. One of the three technically acceptable proposals was eliminated for failing to comply with the solicitation's delivery schedule. Best and final offers (BAFO) were requested on April 26, from the two remaining offerors--the protester and International American. These offerors were required to include in their BAFOs price proposals for delivery of the 1,000 washers to Damman Railyard, Saudi Arabia, and, alternatively, to Dover Air Force Base (AFB), Delaware. All Points submitted the lower-priced BAFO for both locations and stated that it would comply with the RFP's delivery terms, subject to airline availability and the scheduling of government inspections.

Due to the importance of ensuring timely delivery of the washers within a relatively short time period, a preaward survey was conducted for All Points and International American. Information obtained during the preaward surveys revealed that All Points' manufacturer, Graco Pressure Products, had only 30 completed units on hand and very few additional engines in stock. The preaward survey stated that

Graco explained that its engine manufacturer promised to deliver "all 1,000 engines" within a 3-day period. The contracting officer determined that All points neither individually nor through its subcontractor, Graco, adequately demonstrated that it was capable of meeting the proposed delivery schedule since during the short time period necessary to meet the agency's needs, the protester would have to acquire and assemble parts and produce, test, package and ship 1,000 washers, only 30 of which were presently completed. The Army was also concerned that All points conditioned its timely delivery upon airline availability and other factors. After rejecting the protester as nonresponsible, the contracting officer, on May 3, awarded the contract to the next low offeror, International American.^{1/} The contract provided for the awardee to deliver the required 1,000 portable pressure washers to Dover AFB.

All points argues that the contracting officer improperly relied upon information regarding how many units Graco had in stock and claims that the solicitation did not require contractors to have a certain number of completed units on hand. All points contends that the contracting officer unreasonably relied on this information and thus made an award on different terms than those solicited. The protester also contends that it was not informed of any negative information regarding its responsibility and it was not afforded an opportunity prior to award to defend against that information or to provide additional proof of its delivery capability.

"Responsibility" relates to a potential contractor's ability to meet certain general standards set forth in Federal Acquisition Regulation (FAR) § 9.104-1, as well as any special standards set forth in a solicitation. Both the RFP and FAR § 9.104-1(b) clearly state that to be determined responsible, a prospective contractor must be able to comply with the required or proposed delivery schedule. The regulations place the burden on a prospective contractor to

^{1/} The contracting officer did not question the awardee's ability to timely deliver the 1,000 washers since International American had 800 completed units in stock and ready for shipment. During its pre-award survey, the awardee assured the contracting officer that the remaining 200 units, which were being assembled, would be completed and ready for delivery within 4 days. Although the protester suggests that the agency placed a premium on delivery ahead of the RFP's schedule, and gave the awardee additional points for its proposed delivery schedule which was shorter than required by the RFP, there is no evidence in the record that supports this allegation.

affirmatively demonstrate its responsibility, FAR § 9.103(c), and require that in the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. FAR § 9.103(b).

With respect to the merits of the nonresponsibility determination, it is a matter of business judgment, which is vested in the discretion of the contracting officer and we generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the agency's part or a lack of any reasonable basis for the determination. Israel Aircraft Indus. Ltd., B-242552, May 10, 1991, 91-1 CPD ¶ 454. All Points alleges that the contracting officer's nonresponsibility determination lacks a reasonable basis and, as such, is tantamount to bad faith. To be reasonable (which is the ultimate issue here since All Points' bad faith allegation is premised upon lack of reasonableness and is not otherwise supported by any evidence in the record), a discretionary decision must reflect a reasoned judgment based on the investigation and evaluation of the evidence available at the time the decision was made. See Intera Technologies, Inc., B-228467, Feb. 3, 1988, 88-1 CPD ¶ 104.

In regard to All Points' capability to deliver all of the required washers within the established delivery schedule, the protester argues that its proposal fully complied with the RFP's requirements. The preaward survey, however, revealed that All Points itself had no portable pressure washers on hand, but that Graco, the protester's manufacturer, had 30 washers in stock and would have to acquire approximately 970 engines from its engine manufacturer to produce the additional washers required under the RFP. We find reasonable the contracting officer's concerns regarding the protester's capability to deliver the 1,000 washers within the short delivery time necessary to meet the Army's critical needs. Although the RFP, as All Points states, does not require that an offeror have a specific number of completed units in stock, we find this to be a legitimate factor to be considered in making a delivery capability determination in this case and do not find that this consideration changes the RFP's stated factors for award.


Since only 30 units were available at the time of the preaward survey, All Points and Graco would have to acquire engines, assemble, produce, test, package, and ship the units in a very short time frame, including the first 100 units with 10 days of receipt of the order. Timely delivery was critical to prevent any delay in the return of--and possibly affect the safety of--United States troops which would be unable to leave the potentially dangerous conditions in the Persian

Gulf until their equipment was properly disinfected and cleaned. Although the protester may have been able to make timely delivery at the point of origin, Graco's plant in Minnesota, it remained reasonably questionable whether the protester could produce, package, and ship the 1,000 units to either Saudi Arabia (which would have required substantial additional time to obtain necessary visas and transportation), or to Dover AFB, Delaware (the protester's proposal did not indicate that it could deliver the 1,000 washers to Dover AFB any sooner than it proposed to deliver them to Saudi Arabia), the required destinations, especially since All Points itself conditioned timely delivery upon transportation availability and the scheduling of government inspections.

We believe it was incumbent upon All Points to provide sufficient proof of its delivery capabilities in its proposal--instead of placing conditions upon its delivery--and in view of the absence of information to the contrary, we find that the contracting officer was justified in finding All Points nonresponsible. See FAR § 9.103(b).

With regard to All Points' contention that the contracting officer should have informed the protester of any negative information regarding its responsibility, while the FAR allows the contracting officer to discuss preaward survey information with the prospective contractor, such discussions are not required. FAR § 9.105-3(b). Accordingly, a contracting officer may base a determination of responsibility upon the evidence in the record without affording offerors the opportunity to explain or otherwise defend against the evidence, and there is no requirement that an offeror be advised of the determination in advance of the award. See Firm Reis GmbH, B-224544, B-224546, Jan. 20, 1987, 67-1 CPD ¶ 72; Oertzen & Co. GmbH, B-228537, Feb. 17, 1988, 88-1 CPD ¶ 158.2/

The protest is denied.


for James F. Hinchman
General Counsel

2/ Since we conclude that the contracting officer reasonably determined All Points to be nonresponsible on other grounds, we consider this issue to be academic.