



Comptroller General
of the United States

Washington, D.C. 20548

145628

Decision

Matter of: Banknote Corporation of America, Inc.

File: B-245528; B-245528.2

Date: January 13, 1992

Cyrus E. Phillips, IV, Esq., Keck, Mahin & Cate, for the protester.

Dag Wilkinson, Esq., Paul F. Khoury, Esq., and Bernard A. McDonough, Esq., Wiley, Rein & Fielding, for American Bank Note Company, an interested party.

Elaine S. Lynn and Patricia L. Johnson, Department of Agriculture, for the agency.

Ralph O. White, Esq., and Andrew T. Fogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly awarded all solicitation line items to offeror submitting all-or-none price is denied even though request for proposals reserves the right to make multiple awards, because the solicitation does not prohibit such prices and because the all-or-none price offered the lowest aggregate cost to the government.

2. Protester's complaint that awardee engaged in predatory pricing is a matter reserved for the Department of Justice, not our Office.

3. Contention that agency improperly proceeded with contract performance notwithstanding a protest is dismissed where the agency complied with its statutory requirement to inform our Office of that decision.

DECISION

Banknote Corporation of America, Inc. (BCA) protests the award of a contract to American Bank Note Company (ABN) pursuant to request for proposals (RFP) No. FNS 91-11BFM, issued by the Food and Nutrition Service, Department of Agriculture, for the production of six denominations of food stamp coupon books. BCA argues that the agency improperly awarded a single contract for all denominations of the coupon books to ABN. In a supplemental protest, BCA challenges the agency's determination to proceed with contract performance notwithstanding the protest.

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

BACKGROUND

The Food Stamp Program assists persons needing help with the purchase of an adequate and nutritious diet. The program operates by distributing to eligible individuals printed coupons known as food stamps, which the recipients can use in lieu of money to buy food. Since 24.2 million people per month receive food through the use of food stamps, the agency's printing requirements for these coupon books are very large.

The Terms of the RFP

The RFP, issued April 1, 1991, sought offers to print all of the government's food stamp coupon books for a 1-year period, followed by three 1-year options. The RFP estimated that the government would require a total of 551,500,000 food stamp coupon books in the first year and sought fixed-price offers for a requirements contract. The total estimate of coupon books was comprised of estimates for each of 6 denominations of the books--\$2, \$7, \$10, \$40, \$50, and \$65--and each denomination of the books was listed in the RFP as a separate line item. Because of the magnitude of the government's requirements, offerors were permitted to submit proposals covering one or any combination of the six denominations of coupon books.

The RFP required offerors to submit separate technical and price proposals. The evaluation scheme for scoring technical proposals included a 500-point scale for rating proposals against 9 evaluation criteria. Technical merit was more important than price, and the RFP advised that the agency would select the offer representing the combination of technical merit and price most favorable to the government. As proposals became more equal in technical merit, the RFP stated that price would become more important. If there were no significant technical differences among proposals, the RFP explained that price would be the determining factor.

With respect to the evaluation of prices, the RFP explained that the agency would total the prices offered for each book denomination for the base period and the three option periods. In addition, the RFP, at paragraph M.6, reserved the right to make multiple awards "to other than the lowest offeror for all items listed in the contract schedule." Paragraph M.6 also stated that if multiple awards were made, "the awards would be based on the lowest price for combinations of the items set forth in the contract schedule."

Evaluation of Proposals

The agency received three proposals in response to the RFP, and scored each in accordance with the evaluation scheme. Two of the offerors--BCA and ABN--were found acceptable, while a third offeror was rejected because it lacked the capacity to produce any coupon books until 9 months after the effective date of the contract.

In reviewing the two acceptable initial proposals, the agency realized that BCA had proposed to perform portions of the requirements stated in a single line item. For example, BCA's initial proposal offered to print 25 percent of the base year requirement for the \$10 coupon book. In response, the agency announced in its request for best and final offers (BAFO) that it was not in the government's interest to split award of a single denomination of coupon books between contractors.¹ Since the agency would not agree to partial awards, BCA concluded that it lacked sufficient capacity to meet the government's requirements for the \$50 and \$65 coupon books.

In addition (and related to the decision not to award a contract for part of a line item), the agency's review of initial proposals revealed that it was unclear whether the price proposals of ABN and BCA permitted acceptance of a single line item. Since, as explained above, BCA lacked capacity to print two of the denominations of coupon books, the agency needed "stand-alone" prices per line item from both offerors to preserve the possibility of multiple awards. Thus, the request for BAFOs also directed the offerors to include "stand-alone" prices for each line item in their proposal.

Upon receipt of BAFOs, the agency reevaluated BCA's and ABN's technical proposals. ABN received 496 points, while BCA received 481 points. Since both technical proposals were rated very high, the agency decided to consider making award to the offeror submitting the lowest price.

Evaluation of the price proposals was complicated by the fact that both ABN and BCA submitted multiple alternate prices. Rather than reproducing here the details of the multiple proposals--ABN submitted 4 alternate price

¹Although the agency recognized that its large printing requirements exceeded the capacity of some offerors, it concluded that having two contractors produce the same denomination of coupon books could produce minute differences in the books that would make it more difficult to detect and deter potential counterfeiters.

proposals; BCA submitted 10--the proposals can be summarized in terms of their pricing strategies.

ABN's four alternate price proposals contain three pricing strategies: (1) a proposal offering all-or-none prices, available only if ABN was awarded all six of the denominations of coupon books; (2) a proposal offering "stand-alone" prices (as requested by the agency), available for the award of any separate line item; and (3) two proposals offering combination prices, available only for two specified combinations of line items.²

BCA's 10 alternate price proposals contain 2 of the pricing strategies explained above: (1) four proposals offering "stand-alone" prices (as requested), available for the award of a separate line item; and (2) six proposals offering combination prices, available for six specified combinations of line items.³

As part of its review of the alternate price proposals, the agency prepared an analysis of the line-item prices and total aggregate price involved in accepting each of the alternate proposals. This analysis showed that: (1) ABN's all-or-none prices provide the lowest aggregate price for the government; (2) ABN's all-or-none prices and BCA's prices are very close; and (3) ABN's "stand-alone" prices for individual line items are substantially higher than its other prices, and substantially higher than BCA's prices. Thus, the agency decided to award to ABN even though two of the line-item prices proposed by BCA were lower than those proposed by ABN in its all-or-none price, because ABN's all-or-none price offered the government the lowest aggregate price. On August 29, the agency notified BCA that award would be made to ABN, and this protest followed.

²ABN's two specified combinations of line items were: (1) all line items with the exception of the \$2 coupon book; and (2) all line items with the exception of the \$2 and \$50 coupon books.

³The difference in the number of alternate proposals submitted by ABN and BCA--4 versus 10--is explained by the structure of those proposals. ABN offered its six single line item prices as part of a single proposal; BCA submitted a separate proposal for each of the four single line item prices it offered. BCA's "stand-alone" prices only covered four line items because, as explained above, BCA lacked the capacity to produce all of the \$50 and \$65 coupon books. For the same reason, BCA's six combination prices only offered combinations of the \$2, \$7, \$10 and \$40 coupon books.

DISCUSSION

Acceptance of ABN's All-or-None Prices

BCA argues that the agency's award based on lowest overall cost violates the RFP's instruction that the agency will determine the total price for each denomination of coupon books by adding together the price for the base period and the option quantities.⁴ This provision, paragraph M.5 of the RFP, also advises offerors that the total line item price will be used to determine award for each denomination of coupon book. According to BCA, the agency instead evaluated prices by combining the prices on line items for which BCA was the low offeror with ABN's "stand-alone" prices for the remaining line items, to determine if the combination was less than ABN's all-or-none price. BCA argues that this analysis was contrary to the evaluation scheme and that BCA should receive award for the two denominations of coupon books for which it submitted the lowest price.

During the course of this protest, BCA was provided with the agency's analysis of the alternate price proposals, pursuant to a protective order issued by our Office. As a result, the facts here are not in dispute. BCA correctly asserts that its proposed price for two line items was lower than the price for those line items in ABN's all-or-none price proposal, that the RFP permitted multiple awards, and that the agency chose not to award to BCA after adding BCA's price on line items for which it was the low offeror to ABN's prices for the remaining line items to determine if the combination offered the lowest aggregate cost to the government. In addition, as explained above, ABN's all-or-none price clearly offered the lowest aggregate cost to the government for all six line items.

BCA's contentions about the RFP's price evaluation provisions ignore the fact that the agency's consideration of its aggregate costs here is no different than in any situation where an offer is limited to acceptance of all-or-none of the line items solicited. The fact that the RFP provided for multiple awards did not bar offerors from

⁴BCA's initial letter of protest also included two other contentions--that the agency had improperly awarded to other than the highest rated offeror, and that ABN's price for the \$65 coupon book was unreasonable and should have been rejected. Both of these issues were addressed in detail in the agency's report, yet BCA's comments responded to neither. As a result, we consider these issues abandoned, and will not discuss them further. See Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338.

conditioning proposals upon receipt of an entire award. Uniroyal Plastics Co., Inc., B-240319, Nov. 2, 1990, 90-2 CPD ¶ 360; see also Tritech Field Eng'g, B-233357, Feb. 27, 1989, 89-1 CPD ¶ 207. Once the agency received an all-or-none offer, it was required to determine whether award of all line items to that offeror, including those line items for which the offeror is not low, would result in the lowest overall cost to the government. Uniroyal Plastics Co., Inc., supra.

In our view, the agency did not abandon its evaluation scheme by considering whether ABN's all-or-none prices offered the lowest overall cost to the government. The RFP, although it reserved the right to make multiple awards, did not bar submission of all-or-none offers. Once such an offer was received, the agency reasonably compared the all-or-none prices with each of the alternative price combinations available to it. Based on that comparison, the agency correctly determined that ABN's all-or-none price provided the lowest aggregate cost to the government and properly awarded all six line items to ABN.

Predatory Pricing

Although BCA frames its protest in terms of the agency's evaluation of prices, BCA also argues that ABN's high "stand-alone" prices were calculated to ensure that BCA had no reasonable chance of receiving award. Specifically, BCA complains that whenever its proposed prices are added to ABN's "stand-alone" prices--necessarily incurred in any instance where BCA receives an award⁵--the combination always exceeds ABN's all-or-none price. In addition, ABN's all-or-none prices and BCA's prices are extremely close for a procurement of this magnitude.⁶ Thus, BCA suggests that ABN's pricing was predatory.

⁵Since BCA did not have the capacity to provide all of the government's requirements for food stamp coupon books, and since none of the combination prices submitted by the two offerors were complementary, every alternative available to the agency required at least one award of a line item to ABN under its "stand-alone" prices. For example, if one assumes that BCA proposed the lowest price to produce the \$2, \$7, \$10, and \$40 coupon books, the agency would be required to award the \$50 and \$65 coupon books to ABN at its "stand-alone" prices.

⁶For example, on one line item both offerors submitted prices in excess of \$10 million that were approximately \$1,000 apart. Several other line item prices were very close.

We recognize that BCA and ABN may possess unique insights into each other's business practices and costs. BCA explains that the specialized intaglio printing industry¹ was dominated by ABN and United States Banknote Corporation, when in May 1989, United States Banknote Corporation made a tender offer for ABN. According to BCA, the Antitrust Division of the Justice Department consented to the merger on the condition that a stand-alone intaglio printing company be set up to compete against the merged entity. As a result, BCA, the protester here, was created and received its printing plant from ABN on February 27, 1990. According to BCA, unless it receives some portion of this contract, its continued existence is in doubt.

Allegations of predatory pricing practices are reserved for review by the Department of Justice as part of its enforcement of the antitrust laws and are not a matter for review by our Office. All Rite Rubbish Removal, Inc., B-241288, Jan. 31, 1991, 91-1 CPD ¶ 99; Incore, Inc., B-236997, Oct. 13, 1989, 89-2 CPD ¶ 354. Under 41 U.S.C. § 253b(e), contracting officers are required to report evidence of suspected antitrust violations to the Attorney General for review. Federal Acquisition Regulation (FAR) subpart 3.3 elaborates further on this requirement, and specifically directs contracting officers to bring such matters to the attention of the Assistant Attorney General, Antitrust Division, Department of Justice. FAR § 3.303(f). Thus, it is the contracting officer's responsibility here to consider whether sufficient evidence of antitrust activity exists--given the prior relationship between these parties, and the agency's stated preference for two manufacturers of food stamp coupon books--to warrant a referral to the Attorney General. In addition, there is no barrier to the protester itself referring the information to the Attorney General.

Determination to Proceed with Contract Performance

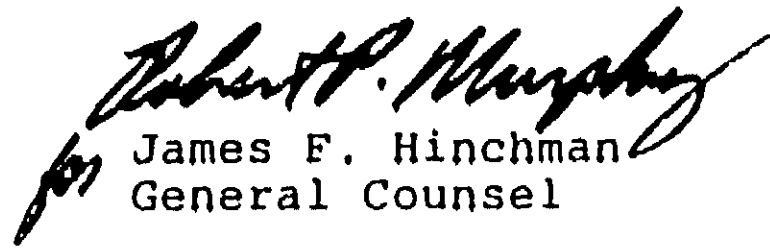
During the course of this protest, the agency informed our Office and the protester that it would proceed with contract performance notwithstanding the protest, pursuant to FAR § 33.104(b). In response, BCA filed a supplemental protest objecting to the agency's determination and its finding that urgent and compelling circumstances require it to proceed with award.

We dismiss BCA's supplemental protest because we do not review such determinations. See The Taylor Group, B-234294, May 9, 1989, 89-1 CPD ¶ 436. When an agency makes a

¹Intaglio printing describes the high-quality printing process used to print food stamps, as well as paper currency, postage stamps, stocks, and bank notes.

determination to proceed with performance of a contract while a protest is pending, the agency's only obligation is to inform our Office of that decision. See 31 U.S.C. § 3553(d)(2) (1988); FAR § 33.104.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel