



Comptroller General
of the United States

Washington, D.C. 20548

Westfall/McGrail
14668/

Decision

Matter of: United Resin Corporation

File: B-247292

Date: May 18, 1992

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Jonathan H. Kosarin, Esq., and Gary Van Osten, Esq.,
Department of the Navy, for the agency.
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Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

1. Protest alleging that agency miscalculated cost of transporting items solicited on an F.O.B. (free on board) origin basis to agency destinations is denied where record does not support protester's assertion that rates relied on by agency in its evaluation are not obtainable.
2. The General Accounting Office will not consider allegation that awardee will be unable to perform contract at the offered price where there is no evidence that contracting officials acted in bad faith in determining that awardee was a responsible contractor.
3. Where awardee certifies in its offer that it is the actual manufacturer of the items covered by the solicitation and protester offers no evidence that certification is false, the General Accounting Office will not question awardee's representation.
4. Protest alleging that agency failed to guarantee confidentiality of protester's offer prior to opening is denied where agency maintains that appropriate procedures for safeguarding of offers were followed and protester presents no evidence that procedures were breached.
5. Allegations that procurement should have been conducted on a sealed bid, rather than negotiated, basis and on an F.O.B. (free on board) destination, rather than F.O.B. origin, basis are dismissed as untimely where not raised until after award.

DECISION

United Resin Corporation protests the award of a contract to Bonded Products Inc. under request for proposals (RFP) No. N00104-91-R-CD29, issued by the Department of the Navy, Ship Parts Control Center (SPCC) for epoxy adhesive kits. United Resin contends that in evaluating offers, which were solicited on an F.O.B. (free on board) origin basis, the Navy miscalculated the cost of transporting the kits from the offerors' plants to the specified destinations; that Bonded submitted a below-cost offer; that Bonded may not be the actual manufacturer of the kits that it proposes to supply; and that the Navy did not have in place procedures sufficient to guarantee the confidentiality of offers prior to opening.

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

The RFP, which was issued as a total small business set-aside, solicited offers to supply 151 epoxy adhesive kits (73 for delivery to Portsmouth, Virginia; 51 for delivery to Oakland, California; and 27 for delivery to Pearl Harbor, Hawaii), with an option for up to 151 additional kits. The solicitation contemplated award of a firm, fixed-price contract to the responsible offeror proposing the lowest price and provided that the cost of transporting the kits from the point of origin (i.e., the offeror's plant) to the specified destinations would be taken into account in evaluating overall cost to the government. The RFP also invited offerors to submit for the government's consideration any transportation transit privilege credits (a form of discounted shipping rate)¹ that the offeror had established with regulated common carriers which might be applied to the shipment of the kits between the offeror's point of origin and the designated destinations.

Four offerors responded to the RFP by the September 3, 1991, closing date. One of the four represented in its offer that it would furnish kits that had not been manufactured by a small business concern; the buyer therefore eliminated the offer from further consideration for award. Of the three remaining offerors, Bonded offered the lowest price per kit of \$1,641; United Resin's price of \$1,728.61 per kit was second low.²

¹See Federal Acquisition Regulation (FAR) § 47.305-13.

²The third offeror, The Flex-hesive Company, offered the highest price per kit; in addition, its total evaluated cost (including transportation) was highest.

Under the clause inviting offerors to propose transit credits, United Resin offered discounted shipping rates of \$93/kit to Portsmouth, Virginia, and \$110/kit to Oakland, California; Bonded offered no discounts.

The buyer then requested a transportation cost evaluation by the SPCC Transportation Office. That office in turn asked the Military Traffic Management Command (MTMC) to supply the applicable freight and handling rates. Using these rates, the SPCC Transportation Office calculated the cost of shipping the kits from each offeror's plant to the designated destinations. The transportation officer determined that two truckloads (each with a capacity of 40,000 pounds) would be required to transport the 73 kits (which represented a gross shipping weight of 69,131 pounds) to Portsmouth, Virginia, and that another two truckloads would be required to transport the remaining 78 kits (which represented a gross shipping weight of 73,866 pounds) to Oakland, California. (Of the 78 kits to be delivered to Oakland, 27 were then to be shipped via ocean freight to Pearl Harbor.) The transportation officer calculated the offerors' transportation costs as follows:

<u>Bonded Products</u>	2 truckloads <u>Price</u>
Point of origin (West Chester, Pennsylvania) to Portsmouth, Virginia (73 kits)--253 miles (\$350 minimum charge per truckload)	\$ 700.00
West Chester, Pennsylvania, to Oakland, California (78 Kits)--2,854 miles at \$.77/mile (\$2,197.58 per truckload)	4,395.16
Oakland, California to Pearl Harbor, Hawaii (27 Kits) (via ocean freight)	<u>3,654.23</u>
Total:	\$8,749.39
<u>United Resin</u>	
Point of origin (Royal Oak, Michigan) to Portsmouth, Virginia (73 Kits)--695 miles (\$799.25 per truckload)	\$1,598.50
Royal Oak, Michigan, to Oakland, California (78 Kits) 2,380 miles at \$.77/mile (\$1,832.60 per truckload)	3,665.20
Oakland, California, to Pearl Harbor, Hawaii (27 Kits) (via ocean freight)	<u>3,654.23</u>
Total:	\$8,917.93

The buyer then calculated United Resin's transportation costs based on the discounted rates that the protester had offered. Since the transportation costs using the rates

proposed by United Resin totalled \$19,023.23,¹ the buyer used the government's transportation cost in evaluating United Resin's offer. Using this figure, he calculated the total cost of United Resin's proposal, for both the base and option quantities, plus transportation, as \$530,958.15; the evaluated cost of Bonded's offer, in contrast, totalled \$504,331.39. After determining that Bonded was a responsible offeror, the buyer awarded to Bonded on November 22, 1991.

United Resin argues first that the government's transportation cost figures are too low and that no common carrier would be willing to transport goods at the rates cited by the agency. The protester maintains that comparison of the total evaluated cost of Bonded's proposal, using the correct sum for government transportation, with the total evaluated cost of the United Resin proposal, using the shipping rates that it offered, would reveal that United Resin's offer was in fact low.

We find no evidence that the agency's transportation cost estimates, which have twice been verified by the SPCC Transportation Office and the MTMC, were unrealistically low. The agency has furnished our Office with copies of rate quotations provided by MTMC which demonstrate that there are in fact carriers that have offered to transport goods for the government at the quoted rates. With regard to the reasonableness of the rates, it is not surprising that a carrier would be willing to transport a full truckload of kits at a price per kit significantly lower than standard commercial per pound shipping rates.

The protester argues next that Bonded's offer is below cost, and that Bonded must be "cross-subsidizing" this contract with other government awards to cover its overhead expenses and profit. This allegation concerns Bonded's ability to perform the contract at the offered price, which is a matter of responsibility. The agency has determined that Bonded is responsible, and our Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith by government officials or misapplication

¹The buyer calculated the costs using the shipping rates offered by United Resin as follows:

Destination

Portsmouth, Virginia	73 kits at \$ 93/kit =	\$ 6,789.00
Oakland, California	78 kits at \$110/kit =	8,580.00
Pearl Harbor, Hawaii	27 kits =	<u>3,654.23</u>
(from Oakland, California)	Total:	= \$19,023.23

of definitive responsibility criteria. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1992); Contact Int'l Corp., B-246937, Dec. 20, 1991, 91-2 CPD ¶ 571.

United Resin contends that Navy officials have acted in bad faith here by failing to investigate whether Bonded is in fact "cross-subsidizing" this award with other government contracts. We disagree. We are aware of no law or regulation that would prevent an offeror from "cross-subsidizing" one fixed-price contract with another (i.e., increasing its margin of profit under one contract, while decreasing it under another), so long as its prices under both are reasonable. Here, the protester has offered no evidence that Bonded has been awarded other government contracts at other than reasonable prices.

United Resin next questions whether Bonded is in fact the manufacturer of the epoxy kits that it has offered. The protester speculates that since Bonded shares facilities with an affiliated company named Spellite Corp., Spellite may in fact be manufacturing the kits to be supplied by Bonded. Bonded certified in its offer that it was the actual manufacturer of the items covered by the solicitation. Since the protester has offered no evidence that this certification was false, we see no reason to question it. See East West Research, Inc., B-237864, Feb. 23, 1990, 90-1 CPD ¶ 218, aff'd, B-237864.2, May 31, 1990, 90-1 CPD ¶ 525.

The protester next alleges that the Navy did not have in place procedures sufficient to guarantee the confidentiality of offers prior to opening and that, as a consequence, it has no guarantee that its offer was kept confidential.

The agency reports that, in accordance with its procedures, the four offers received in response to this RFP remained sealed and safeguarded in the SPCC bid room until 4 p.m. on September 3, 1991, the closing time and date specified in the solicitation. Bid room officials handcarried the offers to the buyer shortly thereafter; the buyer then opened the offers for the first time.

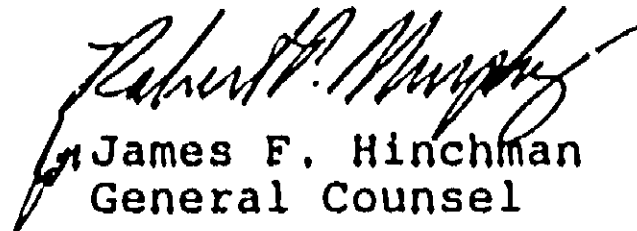
There is no indication that the confidentiality of United Resin's offer was compromised at any point. Even the circumstantial evidence does not suggest that United Resin's price was exposed--i.e., Bonded's price was significantly, as opposed to minimally, lower than United Resin's. We therefore find no support for the protester's allegation that the agency failed to adequately safeguard its offer prior to opening.

Finally, in commenting on the agency report, United Resin raises two additional arguments concerning the terms of the

solicitation itself. The protester contends that the procurement should have been conducted on a sealed bid, as opposed to negotiated, basis. In addition, United Resin complains that the Navy solicited offers on an F.O.B. origin basis in this procurement, rather than on an F.O.B. destination basis, as it has in the past. The protester speculates that this change was made to place it at a competitive disadvantage.

Both of these allegations concern improprieties in the terms of the solicitation itself. To be timely, protests based upon apparent solicitation improprieties must be filed prior to the closing date for receipt of initial proposals, 4 C.F.R. § 21.2(a)(1); Fiber-Lam, Inc., 69 Comp. Gen. 364 (1990), 90-1 CPD ¶ 351. Since United Resin did not raise these objections until after award, these grounds of protest are dismissed as untimely.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel