



Decision

Matter of: Golden Manufacturing Co., Inc.--
Reconsideration

File: B-255347.3

Date: July 18, 1994

Jeffrey B. Mulhall, Esq., Robert S. Brams, Esq., and Christopher Lerner, Esq., Gadsby & Hannah, for the protester.

Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request fails to demonstrate that prior decision contained an error of fact or law which would warrant its reversal; allegation that the agency's justification for other than full and open competition did not adequately support the quantity of items to be acquired does not provide a basis for reversal of decision since record supports reasonableness of the quantity.

DECISION

Golden Manufacturing, Co., Inc. requests that we reconsider our decision, Golden Mfg. Co., Inc., B-255347, Feb. 24, 1994, 94-1 CPD ¶ 183, in which we denied Golden's protest against the award of a contract to American Apparel Manufacturing, Inc. pursuant to a series of broad agency announcements (BAA) issued by the Defense Logistics Agency, Defense Personnel Support Center (DPSC), to acquire a variety of clothing and textile items. Under the contract, American is to establish an "Electronic Data Interchange/Quick Response System" in connection with supplying an indefinite quantity of field coats and is to work with the government to commercialize manufacturing processes in order to reduce costs and improve surge production capabilities.

We deny the reconsideration request.

As we explained in our decision, a BAA is a contracting method by which government agencies can acquire basic and applied research. Unlike sealed bidding and other negotiated procurement methods, a BAA does not involve a specific statement of work and no formal solicitation is

060529/15219/

issued. The agency identifies a broad area of interest within which research may benefit the government, and organizations are then invited to submit their ideas within a certain period of time. The offerors who submit proposals are not competing against each other but rather are attempting to demonstrate that their proposed research meets the agency's requirements. Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229. The agency may decide to fund those efforts and award contracts to those offerors who submit ideas which the agency finds suitable. See Federal Acquisition Regulation § 35.016.

The contract award to American Apparel involving the production of field coats was one of several awards resulting from four BAAs which were issued between March 1992 and April 1993. The BAAs were issued to implement a Department of Defense (DOD) program established to test unique and innovative approaches for maintaining and/or expanding a viable industrial base with sufficient surge capability to meet DOD requirements during mobilization or contingencies short of a declared national emergency. The BAAs stated that "[c]ompetition will be restricted consistent with the authority of 10 U.S.C. § 2304(c)(3) to solicit on an other than full and open competition basis to enhance, maintain, expand or stabilize the industrial base."

American Apparel submitted a concept paper on May 15, 1992, offering to provide field coats using electronic commerce and shared production agreements. Golden submitted a concept paper on June 7, 1993, proposing to provide field coats under the program. The paper stated that Golden currently holds a contract for 822,000 field coats and is producing 8,000 field coats weekly. With respect to the quantity of coats proposed, the paper stated as follows:

"Our minimum sustaining rate to ensure maximum cost efficiency and production is 7,000 Field Coats weekly. Of the 7,000 Field Coats produced weekly, a minimum of 1,500 coats will be Commercial coats. That means we will require a Government Contract that calls for an average production rate of approximately 5,500 weekly."

On October 1, the protester was advised that an award had been made to American for up to 95,000 field coats. Golden was also shown a DPSC "Justification for other than full and open competition" which stated that 10 U.S.C. § 2304(c)(3) authorized the acquisition on an other than full and open competition basis. The justification included a discussion of the electronic commerce and shared production agreement concepts, stating that "[u]se of the authority cited above is necessary to develop new business strategies to utilize

advanced manufacturing and inventory management techniques in an effort to improve the ability of maintaining and/or expanding a viable industrial base with sufficient mobilization capability to meet DoD requirements." The justification also provided as follows:

"DPSC does not possess the knowledge and experience required to assess the merits of competing technical proposals. It is in the best interest of the Government to gain the required experience from a vendor with a concept in both producing the Field Coat and conducting Electronic Commerce prior to soliciting competitive proposals. . . .

"Future requirements will be solicited on the basis of full and open competition. The results of the test acquisition with American Apparel will be utilized to develop evaluation criteria for competitive proposals."

The justification also stated that American would provide between 8,000 and 95,000 coats under the contract.

In its protest, Golden argued primarily that 10 U.S.C. § 2304(c)(3) did not provide the agency with authority to conduct the acquisition on an other than full and open competition basis. We dismissed this argument since each of the BAAs, including the one to which Golden responded, clearly stated that the agency would restrict competition consistent with 10 U.S.C. § 2304(c)(3) "to enhance, maintain or stabilize the industrial base." Since in June, based on the BAA, Golden was aware of the agency's view that the statute provided authority for contracts such as the one Golden challenged, we concluded that the firm was required to have filed its protest against the agency's position prior to the closing date for submission of concept papers.

Golden also objected to the scope of the justification, arguing that the improper award removed a significant number of coats from competition and deprived it of an opportunity to produce those coats for the government. It asserted that the government will purchase as many as 95,000 field coats in the first year of the contract with American and that there had been no showing that the agency is required to purchase so many coats in order to demonstrate the acquisition strategy.

We found this argument to be untimely also, noting that the record demonstrated that Golden knew several months before filing its protest that the agency intended to purchase a significant volume of coats through the contract awarded pursuant to the BAA. Indeed, the protester, in its concept

paper, proposed delivery of twice the maximum number of coats being purchased under American's contract. Thus, as we pointed out, the protester knew when it submitted its concept paper that the contract awarded could require the delivery of a significant number of coats. We concluded that if Golden believed that this was improper, it was required to raise the issue before submitting its concept paper.

In its reconsideration request, Golden contends that we erred in concluding that Golden knew when it submitted its concept paper that the agency intended to purchase a significant volume of coats through the BAA. Golden states that, in fact, it did not know the quantity of coats that would be purchased pursuant to the BAA. It explains that while its concept paper proposed a significant number of coats, our decision makes an "illogical assumption" that there is a connection between "an offeror's hopes and the government's procurement work." It concludes that it was entitled to wait until the justification was issued before protesting the precise number of coats covered by the justification.

While we agree with Golden that it could not have known the precise number of field coats that would be supplied in connection with a resulting contract when it submitted its concept paper, we think that the protester has misunderstood our dismissal; we did not specifically address the question of the precise number of coats as an independent issue. Rather, we understood Golden's argument to be connected to its challenge to the alleged absence of competition for a significant number of field coats. When we stated that Golden knew when it submitted its concept paper that the agency intended to purchase a significant volume of coats, the point we were making was that Golden was aware that the agency intended to award a contract for innovative concepts as well as a substantial quantity of end items, such as field coats. We viewed the gravamen of the protest, in this regard, to be that the agency improperly used the BAA as a vehicle to purchase a significant quantity of deliverables as opposed to purely a concept. The import of this aspect of our decision was that, to the extent Golden believed that the agency was prohibited from purchasing a significant quantity of supplies such as coats using the BAA procedure, it was required to file a protest prior to submitting its concept paper.

Golden argues that our decision should have specifically addressed the merits of its argument that the justification was deficient for failing to adequately justify the precise quantity of coats which would be purchased. It contends further that there has been no showing that the agency is required to purchase so many coats for a successful

demonstration program. Given the nature of the contract and the fact that the justification authorized, at most, delivery of less than half the number of coats proposed by Golden, as stated above, we did not view the protester's challenge to the specific number of coats as central to the protest and did not treat it separately in our decision upholding the award. In any event, we see nothing unreasonable about the specified range of coats in light of the test nature of this acquisition and its relevance to the agency's future buys of quantities of coats that may well be even larger than the maximum specified in this procurement.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contained an error of fact or law or information not previously considered that warrants its reversal or modification. 4 C.F.R. § 21.12(a) (1994); Camar Corp.--Recon., B-249250.2, Apr. 1, 1993, 93-1 CPD ¶ 282. Golden has not met this standard.

The request for reconsideration is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel