



Comptroller General
of the United States
Washington, D.C. 20548

809261

Decision

Matter of: TAAS Israel Military Industries Ltd.
File: B-258039.3; B-258039.4
Date: January 23, 1995

Jacob B. Pompan, Esq., Pompan, Ruffner & Werfel, for the protester.
Paul J. Seidman, Esq., and Robert D. Banfield, Esq., Seidman & Associates, for the Ensign-Bickford Company, an interested party.
Craig E. Hodge, Esq., and Bradley J. Crosson, Esq., Department of the Army, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency is required to make multiple awards, rather than an aggregate award, where invitation for bids (IFB) listed required quantities of explosives as ten separate contract line items, each covering a different size and quantity of explosives; the IFB did not require an aggregate award; the requirement is clearly severable; and multiple awards will result in a lower overall price to the government.

DECISION

TAAS Israel Military Industries Ltd. protests the decision by the Department of the Army to make multiple awards under invitation for bids (IFB) No. DAAA09-93-B-0429, issued by the agency for various quantities of different grain flexible linear shaped charges (FLSC). The protester contends that the agency should make an aggregate award for all contract line items to TAAS.

We deny the protest.

BACKGROUND

The IFB, issued on December 28, 1993, solicited bids for various quantities of 10 different grain FLSCs, each grain (i.e., size) quantity identified in section B of the IFB as a separate contract line item number (CLIN). The IFB provided a blank space for each CLIN where bidders were to

¹FLSCs are explosives used primarily in demolition.

insert separate unit and extended prices for each of the 10 CLINs. The IFB did not contain a space for bidders to submit a total bid price for all CLINs. Award was to be made to the responsible bidder whose bid, conforming to the IFB, would be most advantageous to the government considering only price and price-related factors. TAAS submitted the lowest aggregate bid by the May 25 bid opening date, and on July 21, the agency awarded a contract to TAAS for all CLINs.

The Ensign-Bickford Company (EBCo), another bidder, subsequently protested to our Office the award of the contract to TAAS. As relevant here, EBCo argued that an aggregate award to TAAS did not result in the lowest overall price to the government. In response to EBCo's protest, the agency reevaluated bids on a line item basis and concluded that multiple awards would, in fact, result in the lowest overall price to the government. Specifically, the Army informed us that EBCo was the low bidder on CLINs 0001, 0002, 0003 and 0009, and that those items would be deleted from TAAS's contract and awarded to EBCo. On September 16, we dismissed EBCo's protest. This protest followed.

PROTESTER'S CONTENTIONS

TAAS does not dispute the agency's conclusion that multiple awards will result in an overall lower price to the government. Rather, the protestor argues that the IFB contemplated and required an aggregate award, and that as the low bidder on an aggregate basis, it is entitled to award for all CLINs. TAAS points to the IFB's incremental delivery schedule and first article test report requirements as evidence that the agency intended to make an aggregate award; according to TAAS, it would be virtually impossible for a single contractor to manufacture and deliver the total quantities of FLSCs in any fashion other than as provided in the schedule set out in the IFB. TAAS further points out that over the previous 8 years the Army has always procured these items by making aggregate, rather than multiple, awards. TAAS also maintains that since the IFB did not incorporate a clause for evaluating multiple awards, the "tenor" of the IFB suggested that the agency would make an aggregate award.

²In its initial protest, TAAS maintained that the agency's calculations which resulted in the award of CLINs 0001, 0002, 0003, and 0009 to EBCo were flawed. In its comments on the agency report, however, TAAS conceded that EBCo is low on CLINs 0001, 0003, and 0009, thus only disputing the agency's calculations for CLIN 0002. TAAS subsequently informed our Office that it would not pursue this aspect of its protest concerning CLIN 0002.

DISCUSSION

The IFB stated that bids would be evaluated on the basis of price and price-related factors only, and that award would be made on the basis of the bid deemed most advantageous to the government. The IFB incorporated by reference the contract award clause for sealed bidding found at Federal Acquisition Regulation (FAR) § 52.214-10, which states in pertinent part:

"(c) The [g]overnment may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The [g]overnment reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered unless the bidder specifies otherwise in the bid."
(Emphasis in original.)

Where, as here, the award clause in an IFB permits the government to accept any item or group of items in a bid, and the solicitation does not otherwise specifically require an aggregate award, multiple awards may be made. HFS, Inc., B-246018, Feb. 7, 1992, 92-1 CPD ¶ 160; Talbott Dev. Corp., B-220641, Feb 11, 1986, 86-1 CPD ¶ 152. Moreover, the agency is required to make multiple awards under an IFB where such awards are permitted by the solicitation and would result in the lowest overall price to the government. See Weather Experts, Inc., B-255103, Feb. 9, 1994, 94-1 CPD ¶ 93. That is the situation we have here.

Although the agency states that it initially intended to make an aggregate award, the IFB did not require an aggregate award. The IFB required bidders to price each CLIN separately, contained no space for a total price, and did not state specifically that an aggregate award would be made. In addition, the IFB's award clause, quoted above, permitted multiple awards, stating that the agency could "accept any item or group of items of a bid"; and the IFB did not otherwise specifically prohibit multiple awards. This language is sufficient to place bidders on notice that award may be made on an item-by-item basis where the award clause does not also specifically require an aggregate award. See Goodman Ball, Inc., B-217318, Mar. 25, 1985, 85-1 CPD ¶ 348.

Further, the requirement for different grains and quantities of FLSCs is clearly severable. The protester does not argue, and there is nothing in the record to suggest, that the production of different grain FLSCs needs to be a coordinated effort that could only be effectively obtained

by an aggregate award to one firm. In this connection, the protester's reliance on decisions of our Office in support of its position that the IFB contemplated an aggregate award is misplaced. In those decisions, the importance of coordinating the required work and the production of the items called for by the solicitation by one contractor (e.g., coordinating asbestos abatement work with general construction work in Blinderman; the production of "sets" or "units" of items in Durodyne; and supplying all-terrain vehicles equipped with special equipment in N.F.E.) rendered multiple awards impractical. Such is not the case here. Nor is there any evidence that multiple awards could affect the quality or timely delivery of the FLSCs.

The protester's argument that the "tenor" of the IFB suggested that the agency contemplated an aggregate award does not override the clear language of the IFB which provides for multiple awards. Considering the specific language in the award clause, which we have consistently interpreted to permit multiple awards, and given the absence from the IFB of a specific prohibition on multiple awards, we have no basis on which to object to the agency's decision to make multiple awards, notwithstanding the agency's initial intention to make an aggregate award. See Connie Hall Co., B-223440, July 9, 1986, 86-2 CPD ¶ 52.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

³For example, TAAS cites to our decisions in N.F.E., Inc., B-241460, Dec. 21, 1990, 90-2 CPD ¶ 520; Blinderman Constr. Co., B-216298, Dec. 24, 1984, 84-2 CPD ¶ 688, *aff'd*, Feb. 20, 1985, 85-1 CPD ¶ 214; and Durodyne, Inc., B-212922, Dec. 20, 1983, 84-1 CPD ¶ 6.

⁴As noted by TAAS, the IFB did not contain the standard provision for evaluating bids for multiple awards found at FAR § 52.214-22. Absent a specific requirement for an aggregate award, however, the failure to include in the IFB a clause for evaluating multiple awards does not preclude multiple awards. Goodman Ball, Inc., *supra*.