



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

# Decision

**Matter of:** Farmers Dairies Ltd.

**File:** B-260318

**Date:** June 12, 1995

Paul M. Vincent, Esq., and Charles M. English, Jr., Esq., Ober, Kaler, Grimes & Shriver, for the protester. Terry McGinnity II, Esq., Defense Logistics Agency, for the agency. Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where solicitation for supply of dairy and related products divided total line items into four groups and specified that all items of a particular group to be awarded would be awarded to one offeror, and none of the four offerors submitted prices for all of the items in one of the groups, agency properly made award to offeror whose aggregate price was low on those line items for which all four offerors had submitted prices. Agency also properly included in award additional items for which awardee had submitted prices since its aggregate price for 28 of the 29 items awarded was lower than the aggregate price of the only other offeror to submit prices for the same items, and it was the only offeror to submit a price for the 29th item.

## DECISION

Farmers Dairies Ltd. protests the award of a contract to Smith's Food & Drug Center, Inc. under request for proposals (RFP) No. SPO300-95-R-M009, issued by the Defense Personnel Support Center, Defense Logistics Agency, for delivery of a variety of fresh dairy and related products to a number of federal activities, both military and nonmilitary, in Texas and New Mexico.

We deny the protest.

The RFP, which contemplated the award of an indefinite quantity contract (or contracts) for deliveries to be made between February 1, 1995 and January 31, 1996, requested offers on 109 line items, which were, for bidding purposes, broken into 4 groups. Group I, comprising line items 1-21, consisted of milk and milk products for consumption by troops at Fort Bliss, Texas; White Sands Missile Range,

New Mexico; and William Beaumont Army Medical Center, Texas; Group III, comprising items 74-84, consisted of ice cream products for troop consumption at the same locations. Group II, which is the only group at issue in this protest, comprised line items 22-25 and 27-73,<sup>1</sup> for milk and milk products for resale by the Fort Bliss and White Sands Missile Range Commissaries and for consumption at the David Carasco Job Corps Center; Border Patrol and Immigration Detention Center; Federal Prison Camp, Briggs Army Air Field; and the Fort Bliss Club System and Child Development Center, all located in Texas. Group IV, consisting of items 85-110, was for ice cream products for the same facilities.

The solicitation incorporated by reference Federal Acquisition Regulation § 52.215-34 (Evaluation of Offers for Multiple Awards), which provides for award of the items or combinations of items resulting in the lowest aggregate cost to the government, including the assumed administrative costs. In addition, for each of the four groups of line items, the RFP contained the following qualification: "All items to be awarded will be awarded to one offeror." Offerors were encouraged, but not required, to offer on every item.

Four offerors submitted proposals by the December 12, 1994, closing date. All four were included in the competitive range, and discussions were conducted with, and best and final offers (BAFO) requested from, each. All of the offerors submitted prices on at least some portion of the Group II items,<sup>2</sup> but none offered prices on all items in the group. On January 25, 1995, the agency awarded a contract for 29 Group II items to Smith's<sup>3</sup> for a total estimated price of \$1,338,136.49; in addition, it awarded a contract for Groups I, III, and IV at a total estimated price of \$702,769.48 to Farmers Dairies.

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<sup>1</sup>The agency deleted item 26 prior to the conclusion of negotiations.

<sup>2</sup>Farmers Dairies submitted prices on 49 of the 51 items, Smith's, on 30; the other two offerors submitted prices on 31 and 39 items, respectively.

<sup>3</sup>The agency did not award to Smith's one of the items for which it submitted a price since Smith's in its BAFO took exception to the RFP requirements with respect to that item. Specifically, Smith's offered 2 percent, rather than whole, milk under item 27 (Milk, Whole, Acidophilus).

Ten days later, on January 27, the agency issued RFP No. SPO300-95-R-M131, requesting offers on 21 of the 22 line items not awarded to Smith's,<sup>4</sup> for delivery beginning on March 1, 1995 and ending on January 31, 1996. The items were divided into two groups: for delivery to the Fort Bliss and White Sands Commissaries and for delivery to the Federal Prison Camp-El Paso, the Border Patrol and Immigration Detention Center, and the David Carasco Job Corps Center. The new RFP incorporated by reference the terms and conditions of RFP No. SPO300-95-R-M009, including the provision for one award per group.

The protester objects to award of a portion of the Group II items to Smith's, coupled with immediate resolicitation of the remainder, arguing that this approach will result in the award of more than one contract for the items, in violation of the "one award per group" provision contained in the original RFP. Farmers Dairies contends that it would have structured its pricing differently had it realized that the agency might award only a portion of the items and then resolicit for the others. The protester maintains that since it furnished prices for 49 of the 51 items, the agency could have satisfied virtually all of its requirements without having to resolicit by awarding to it rather than to Smith's.

The agency explains in response that it proceeded in the manner that it did--award of approximately two-thirds of the items to Smith's coupled with resolicitation of the others--because that was, in its view, the only manner in which the RFP permitted it to proceed. The agency notes that pursuant to the terms of the solicitation, it could make only one award for Group II and that this award had to be for the combination of items resulting in the lowest aggregate cost to the government. Since none of the four offerors had furnished prices on precisely the same Group II items, nor had any furnished prices on all of the items, the contracting officer had to figure out a way to compare the offers to determine which one represented the lowest overall cost to the government. The contracting officer decided that the only appropriate way to conduct such a comparison was to compare the aggregate prices for the items on which all four offerors had submitted prices. Smith's aggregate price for the 18 common items of \$1,247,002.13 was lowest of the four; Farmers Dairies's price of \$1,282,039.49 was

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<sup>4</sup>The agency explains that it decided not to resolicit for item 67 (66 gallons of fruit punch for delivery to the Fort Bliss Club System and Child Development Center) since this would have been the only item for delivery to that customer; it instead decided to permit the customer to purchase locally.

second low. Once she had determined that Smith's was the lowest-priced offeror on the 18 common items and was thus entitled to the sole award permitted for Group II, the contracting officer further determined that Smith's prices on the 11 additional items on which it had offered prices were reasonable; she therefore awarded Smith's a contract for all 29 items.<sup>5</sup>

Although we do not think that the agency was required to award to Smith as the lowest-priced offeror on the 18 items common to all four offers,<sup>6</sup> we see nothing legally objectionable in its selection of Smith's since Smith's aggregate price on the 29 items awarded was in fact low. The solicitation did not prohibit offerors from submitting prices for--or the agency from awarding a contract for-- fewer than all of the items in the group; the only thing that it prohibited was award to other than the lowest-priced offeror on the combination of items selected for award. Further, the award was consistent with the solicitation language calling for one award for each group of line items, i.e., all items to be awarded from Group II--the 29 items selected for award--in fact were awarded to one offeror--Smith's.

The protester argues that by awarding a portion of the items to Smith's and resoliciting for the remainder, the agency may end up with the equivalent of multiple awards, in contravention of the solicitation language applicable to each group stating that all items will be awarded to one offeror. We disagree. Reasonably interpreted, we think the solicitation provision means that all items in a group to be awarded under this solicitation are to be awarded to one offeror; it does not bar the agency from resoliciting for the remaining items not awarded under this solicitation, given that none of the offerors--including the protester--submitted prices for all the items in Group II.

In any event, we are not persuaded that the protester was prejudiced by the agency decision to proceed in such a manner. Although the protester contends that it would have structured its pricing differently had it known that the agency might make a partial award and resolicit the remaining items--i.e., it would have lowered its prices on

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<sup>5</sup>The record shows that the protester's aggregate price for 28 of the 29 items awarded to Smith's (the protester did not submit a price on the 29th) is higher than the awardee's price for all 29.

<sup>6</sup>Thus, for example, award to Farmers Dairies as the lowest-priced offeror on the 49 items for which it submitted prices would also have been permissible.

the items on which it expected Smith's to submit an offer and raised them on others which it knew Smith's could not produce--we see no reason to think that this would have been the case. First, as previously noted, the protester was on notice that the agency might award less than all items; it should therefore have structured its offer to account for this possibility. Second, given that the RFP permitted--in fact, encouraged--offerors to make arrangements with other approved sources to obtain items which they themselves did not produce, we see no reason to think that Farmers Dairies would have been able to predict in advance on which items Smith's would not compete. Moreover, Smith's was not Farmers Dairies's only competitor here. Under these circumstances, we fail to see any prejudice from the agency's actions.

The protest is denied.



Robert P. Murphy  
General Counsel