



Decision

Matter of: Bluco Corporation
File: B-260368.2
Date: June 21, 1995

Robert W. Ellig for the protester.
Amalia Evola, Esq., Defense Logistics Agency, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency corrective action of terminating award and resoliciting in order to correct material solicitation defect that improperly restricted competition is unobjectionable.

DECISION

Bluco Corporation protests the decision by the Defense Logistics Agency (DLA) to resolicit rather than make an award to Bluco under request for proposals (RFP) No. SP0490-94-R-3632, after terminating for convenience a contract awarded to QU-CO, Inc. DLA's corrective action was taken in response to a protest of the award which had been filed by Bluco.

We deny the protest.

The RFP, issued on September 13, 1994, contemplated the award of a fixed-price contract for "Bluco Corp. or equal, Serial 310, Part Number 94-11-9185" modular fixturing components. Bluco's proposal offered the brand name product components. QU-CO's proposal offered equivalent items. DLA evaluated the proposals, held discussions only with QU-CO, and made an award to that firm on January 31, 1995.

Bluco initially protested the award to our Office on February 7. Bluco argued that the QU-CO components were not equal to the specified Bluco parts. On February 16, DLA advised our Office that it had terminated for convenience the contract with QU-CO and planned to resolicit. DLA stated that, after reviewing Bluco's initial protest, it had concluded that at least one of the components offered by

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QU-CO was not equal to the specified Bluco part and determined that it had improperly held discussions only with QU-CO. The agency also explained that while it had intended to issue the RFP on a brand name or equal basis, the solicitation did not include the required list of salient characteristics, or the brand name or equal clause. In light of the agency's corrective action, we dismissed Bluco's protest. The propriety of this corrective action is the subject of Bluco's current protest, filed on February 17.

Contracting officials in negotiated procurements have broad discretion to determine the corrective action necessary to ensure a fair and equal competition. Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. We will consider whether corrective action taken by an agency in the face of a protest was appropriate to remedy the original improper award. Power Dynatec Corp., B-236896, Dec. 6, 1989, 89-2 CPD ¶ 522, aff'd, B-236896.2, Apr. 20, 1990, 90-1 CPD ¶ 404.

Bluco contends that after the contract with QU-CO was terminated, the agency should have made an award to Bluco. According to Bluco, anything short of awarding it the contract would penalize Bluco for submitting a "true and honest proposal," that met the solicitation requirements.

Bluco's position is untenable because the RFP's failure to include the required salient characteristics is the kind of material solicitation defect which necessitates termination and resolicitation in the present circumstances. Where an agency states its requirements in terms of "brand name or equal," the solicitation must also set forth the salient characteristics to identify for prospective offerors the essential features of the product which will meet the agency's functional requirements. Adams Magnetic Prods., Inc., B-256041, May 3, 1994, 94-1 CPD ¶ 293. Failure of a solicitation to list the salient characteristics of the desired item improperly restricts competition by precluding potential offerors of equal products from determining what characteristics are considered essential for its item to be accepted; hence, cancellation of the solicitation is warranted. See T-L-C- Sys., B-227470, Sept. 21, 1987, 87-2 CPD ¶ 283. Accordingly, the agency's termination for convenience of QU-CO's contract and resolicitation of the requirement constituted appropriate corrective action to

remedy the fact that the solicitation as originally issued failed to set forth the agency's actual functional requirements, and thereby improperly restricted competition.

The protest is denied.

/s/ Michael R. Golden
for Robert P. Murphy
General Counsel