

PK-I

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10, 817

FILE: B-194590

DATE: July 20, 1979

MATTER OF: Ling Electronics, Inc.

DIGEST:

[Protest of NASA Contract Award]

Since protester (incumbent contractor) ^{did} ~~does~~ not question genuineness of competitor's commitments to hire ^{the} protester's employees in event of award, GAO cannot object to proposed use of employees under procurement law principles. To extent ^{that} ~~the~~ protester's complaint of unfair business practices regarding obtaining of commitments relates to claim for money damages from private party, ^{the} ~~the~~ allegation of criminal conduct, or contract administration, matter is not for GAO's review.

Ling Electronics, Inc. (Ling), has protested the proposed award of a contract to KeppCo under National Aeronautics and Space Administration (NASA) request ^{Abc00036} for proposals (RFP) MSF-C-8-1-9-AL-00121 issued by NASA/ Marshall Space Flight Center for onsite maintenance and repair services (including associated spare parts requirements) on Government-owned Ling and MB Electronics equipment.

NASA informs us that Ling (the incumbent contractor for the services) and KeppCo submitted the only proposals under the RFP. Both companies, in NASA's view, demonstrated a "very high degree of technical capability which fully met the RFP requirements" and fully satisfied "all other factors," including "financial condition" and "past performance." Since KeppCo's proposed fixed price was \$46,540 lower than Ling's proposed fixed price and because NASA saw no appreciable difference in the total estimated cost of spare parts from the two offerors, NASA selected KeppCo for the contract.

Ling s Protest

(1) NASA failed to take into account the Ling spare parts discount which is not available to other offerors.

~~005937~~

(2) Since the owner of KeppCo was employed by Ling through June 1978, KeppCo and the owner have no previous business experience or history on which "evaluation and guarantee of performance" can be based. Moreover, since KeppCo is newly formed, Ling will require payment for standard parts on a cash-on-delivery basis and payment in advance for special parts.

(3) KeppCo engaged in unfair business practices in securing the award of the contract. For example, KeppCo proposed to hire current Ling employees to do the work. It was inconsistent for NASA to evaluate proposals on the assumption that either competitor would offer the same labor force. Further, Ling raises the question whether the labor rates proposed by KeppCo may be accepted by NASA "in lieu of fringe benefits such as Health and Insurance, Holidays, Vacation and Paid Leaves, and Retirement which are specified in the RFP and included in any resultant contract."

NASA Response

(1) NASA did take into account Ling's discount; however, in order for Ling's discount to offset the lower KeppCo price, NASA would have to order approximately \$1 million in Ling parts. By contrast, the Government's estimate of parts cost is \$67,200 based on prior years' experience.

(2) The RFP evaluation criteria concerning financial capability and past performance, under which Ling questions KeppCo's evaluation, were included as unscored "other factors." KeppCo was questioned regarding finances and the response was satisfactory. As for business practices and history, the owner of KeppCo has long been associated with Ling in performing the requirements of this procurement. This association was considered to be adequate evidence of his capabilities in regard to these requirements.

(3) Ling's comment regarding unfair business practices and unfair competition is considered to be a matter strictly between the companies and is not germane to the selection.

Analysis

(keyed to the above-numbered protest grounds and responses)

(1) We cannot question NASA's evaluation and Ling has not rebutted same.

(2) Based on our review of the record, Ling has presented no basis for us to question NASA's evaluation of the "other factors" in question.


(3) Contracting offerors are not prevented under procurement law principles from proposing to hire employees of other concerns to perform Government contract work. Cf. Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD 53. Consequently, it is permissible under procurement law principles for competing offerors generally to propose essentially the same labor force as apparently was the case here.

The RFP informed offerors that the "degree of [a proposed employee's] commitment to employment by proposer" would be evaluated. Ling does not question the genuineness of KeppCo's employee commitments. Instead, Ling apparently believes that KeppCo's obtaining of the commitments was an act giving rise to civil or criminal liability and that KeppCo's proposed labor hour cost figure does not substantiate its commitments because required fringe benefits may not be included.

To the extent Ling insists that KeppCo is liable for monetary damages arising from these commitments, Ling's remedy is in the courts and not before our Office since these commitments involve disputes between private parties only. To the extent Ling believes these commitments may involve criminal law violations, the matter is for the appropriate law enforcement authorities and not our Office.

As to Ling's suggestion that KeppCo's proposed labor hour cost necessarily means that certain required fringe benefits will not be provided, it is sufficient to point out that the awardee is contractually committed to provide those benefits. The actual enforcement of this contractual commitment is a matter of contract administration which is the responsibility of the agency rather than our Office.

Protest denied in part and dismissed in part.


Deputy Comptroller General
of the United States