

**DECISION**



11580 D. Ballard  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-194802

DATE: October 3, 1979

MATTER OF: Delphi Industries, Inc. DL600120.

*[Protest of Small Business Set-Aside Contract Award]*

DIGEST:

1. No basis in law or regulation exists to give preference to "woman-owned minority business" in total small business set-aside as small business set-aside program was created for benefit of all small business firms.
2. Even though Request for Proposals (RFP) does not specifically provide for consideration of transportation costs in proposal evaluation, procuring agency could properly consider such costs since applicable procurement regulations require such consideration and RFP gave notice to offerors that factors other than price would be considered.
3. Award of contract without discussions on basis of initial proposals is proper where solicitation notified offerors of such possibility and record supports contracting officer's determination that date of delivery precluded discussions.
4. Determination of whether offeror is capable of meeting delivery requirements of solicitation requires affirmative determination of responsibility, which our Office will not review unless fraud is shown or solicitation contains definitive responsibility criteria.

Delphi Industries, Inc. (Delphi), protests the award of a contract to McGrail Equipment Company, Inc. (McGrail), by the Department of the Air Force under request for proposals (RFP) No. F42600-79-R-4938, a total small business set-aside which was issued on

*DL602941*

*007159*

March 16, 1979. The RFP solicited proposals from four firms for the fabrication and delivery of various "containers" for components of Sparrow missiles.

The closing date specified in the solicitation for receipt of proposals was March 30, 1979. Three firms responded, and on the basis of the initial proposals, contract No. F42600-79-C-4937 was awarded to McGrail on April 27, 1979. No discussions were held with any of the offerors.

Initially, Delphi objects to the contracting officer's failure to give any consideration to the fact that the protester is a "woman-owned minority" business. We find no legal merit to this portion of the protest.

The small business set-aside program was created for the benefit of all small business firms, including those owned and controlled by socially and economically disadvantaged individuals, (Atlas Guard Service, et al, B-193453(3), May 8, 1979, 79-1 CPD 318) and there is no provision either in the law or the regulation for a preference under a total small business set-aside, i.e., the procurement is restricted to competition among small business firms, with no other special preference for firms within this category. 13 C.F.R. 127.15-2 (a)(3) (1979). Thus, the contracting officer would be without the legal authority to give a special preference to a firm controlled by a woman under a total small business set-aside.

Delphi also contends that award of sub line items 0001AA and 0001AB to McGrail was improper because evaluation of the lowest overall cost included, among other factors, consideration of transportation costs, and the solicitation failed to include freight costs as an evaluation factor. Delphi asserts that where delivery terms are f.o.b. origin it is proper to consider freight costs only when the solicitation specifically provides for such evaluation and gives a destination point. Delphi raises this issue because its proposal

was displaced as the lowest cost proposal for item 1 when transportation costs were added.

In this regard the Air Force admits that an evaluation factor for transportation was not included in the RFP; nonetheless it contends that the contracting officer was required by Defense Acquisition Regulation (DAR) § 19-301.1 (1976 ed.) and our decision B-155312, January 15, 1965, to include freight costs in the evaluation of proposals. We agree. *AGC00035*

Decisions of this Office have rejected the argument that the solicitation's failure to specifically mention transportation costs as an evaluation factor precludes their consideration in all instances. See 52 Comp. Gen. 679 (1973). In this respect we believe that paragraph 10(a) Standard Form 33A (incorporated by reference into the solicitation), placed the protester on notice that factors other than its container price would be considered in determining whether its proposal constitutes the lowest overall cost offer. Sayles Biltmore Bleacheries, Inc., B-185262, July 19, 1976, 76-2 CPD 53.

Thus, where as here, the solicitation specifies the destination for supplies and requests origin point shipping information it would be improper to evaluate proposals without consideration of transportation costs. Consequently, except in those instances in which the solicitation specifically states that such costs will not be evaluated, or where it is not feasible to evaluate these costs because destinations are not known, shipping costs are a necessary consideration in proposal evaluation even though the solicitation is silent in this specific regard. 52 Comp. Gen., supra.

Delphi also objects to the contract award on the basis of the initial proposal submissions, i.e., without negotiations. Delphi contends that the delivery dates specified in the RFP do not justify relief from the requirement in DAR § 3-805.2 to conduct discussions

in negotiated procurements. Delphi points out that the RFP provided a 60 day offer acceptance period (ending May 30, 1979); that award was made on April 30, 1979, and that the additional 30 days available should have been used to conduct the discussions required by the regulations.

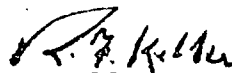
Our examination of the record, however, indicates that the contracting officer acted reasonably in this respect, notwithstanding the additional 30 days theoretically available to conduct negotiations because of the 60 day acceptance period provided in the RFP. For example, issuance of the RFP was delayed twice for technical and other considerations; as a result, the RFP provided only 16 calendar days from the date of its issuance to the date proposals were due. The missile components themselves are being produced by three separate contractors at various locations in the country, and the "component containers" being purchased are to be delivered to those hardware contractors. In addition, the container delivery schedules were established to conform to the hardware contractors' production schedules, and thus container deliveries (item 2) were to commence under the contract on June 30, 1979, with deliveries of items 1 and 3 to commence on September 30, 1979. It is the Air Force's position that as a result of the initial delays it encountered in issuing the RFP and because of the nature of the production schedules, time was not available to conduct negotiations. Delphi has offered no evidence to refute the agency's position in this respect. We therefore have no basis to conclude that the contracting officer's decision to award without discussions was improper and not in conformance with DAR 3.805.1(iii) (which permits award without discussion in procurements "in which date of delivery will not permit discussion").

We also note that paragraph 10(g), Standard Form 33A did advise offerors of the possibility that award may be made on the basis of initial offers received without discussions, and that there is no

evidence to suggest that discussions were held with any offeror. Thus we conclude that the award made without discussions in this case was proper.

Finally, Delphi's question of whether McGrail's production capacity is adequate to meet the solicitation's delivery requirements requires a determination of responsibility which is no longer reviewed by this Office, in the absence of a showing of fraud or the presence of definitive responsibility criteria in the solicitation. Aerosonic Corporation, B-193469, January 19, 1979, 79-1 CPD 35. Neither have been shown here.

The protest is denied.

  
Deputy Comptroller General  
of the United States