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

Decision

Matter of: Fiber-Lam, Inc.
File: B-237716.2
Date: April 3, 1990

Gordon Ayotte, for the protester.
Edward J. Korte, Esq., Office of Command Counsel, U.S. Army Materiel Command, for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. While contracting officer, acting in good faith, may ordinarily rely on information provided by transportation rate specialists in calculating transportation costs on f.o.b. origin offers, he may not automatically do so if it leads to an improper or unreasonable evaluation of the offered prices.
2. Even though evaluation of transportation costs on f.o.b. origin supply solicitation appears unreasonable, protest against the evaluation is denied, where the protester would not be in line for award, even assuming the application of its own transportation calculations.
3. Contracting officer properly accepted, at face value, the awardee's self-certification that it was a small business, in the absence of information that reasonably impeached the awardee's certification.
4. Multiple offers from commonly owned and/or controlled companies may be accepted unless the acceptance of such offers is prejudicial to the interests of the government or other offerors.
5. Protester's objection to the use of negotiated rather than sealed bid procedures is untimely when filed after award rather than prior to the closing date for receipt of proposals.

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DECISION

Fiber-Lam, Inc., protests the award of a contract to The Great Divide Defense Products under request for proposals (RFP) No. DAAA09-89-R-0773, issued by the U.S. Army Armament, Munitions and Chemical Command (AMCCOM) for a quantity of silhouette targets. Fiber-Lam contends that the Army's evaluation of transportation costs was in error, that the awardee's joint venture agreement did not meet the RFP's small business set-aside requirements, that the awardee and another offeror are commonly owned and should not have been allowed to submit separate offers, and that the procurement should have been conducted under sealed bid rather than negotiated procedures.

We deny the protest in part and dismiss it in part.

The RFP invited offers on the basis of both f.o.b. origin and f.o.b. destination, and provided that the government would award on the basis the contracting officer determined to be most advantageous to the government. The RFP further advised that transportation evaluation of offer(s) would be based on the f.o.b. origin prices plus government transportation costs from delivery point(s) to the destination(s) named, and that freight rates used in the evaluation would be those furnished by the Commander, Eastern Area, Military Traffic Management Command, Military Ocean Terminal, Bayonne, New Jersey.

Eleven offers were received by the July 7, 1989, closing date. Great Divide submitted the low f.o.b. origin offer of \$534,658 and Fiber-Lam the next low offer of \$566,040.10.¹/ The Procurement Traffic Branch of AMCCOM computed transportation costs for the five low offerors, including Fiber-Lam and Great Divide, using transportation rates furnished by the Military Traffic Management Command (MTMC). This transportation evaluation showed \$3,813.29 in transportation costs for Great Divide and \$2,874 for Fiber-Lam. Based on this evaluation, the contracting officer determined the f.o.b. origin offer submitted by Great Divide was the most advantageous and awarded that firm the contract on October 18, 1989.

¹/ Great Divide's F.O.B. destination offer was also the lowest received.

Fiber-Lam contends that the Army's evaluation of transportation costs is obviously in error, since the government freight rates used in the computation are substantially lower than the rates quoted to Fiber-Lam by commercial carriers.

A contracting officer, acting in good faith, has a right to rely on the information provided by transportation rate specialists. Pyrotechnics Indus., Inc., B-221886, June 2, 1986, 86-1 CPD ¶ 505; Applied Optic Kinetics, Ltd., B-212332, Feb. 7, 1984, 84-1 CPD ¶ 150. However, the contracting officer may not automatically rely upon such information if it leads to an improper or unreasonable evaluation of the offered prices. See Isometrics, Inc., B-219057.3, Jan. 2, 1986, 86-1 CPD ¶ 2.

In the present case, it does appear that the transportation costs are unrealistically low given the quantity of the silhouette targets and multiple locations to which they are to be delivered. Moreover, the record does not indicate the basis for MTMC's rates or whether this information was properly used by the contracting officer in calculating the transportation costs. Nor is there any indication these calculations were confirmed, even after they were questioned in the protest. Compare Pyrotechnics Indus., Inc., B-221886, supra.

By Fiber-Lam's calculations, Fiber-Lam's transportation costs should be \$14,850 less than Great Divide's transportation costs.^{2/} Inasmuch as Great Divide's f.o.b. origin offer is \$31,382.10 less than Fiber-Lam's f.o.b. origin offer, it is apparent that Fiber-Lam is not prejudiced, even assuming the transportation costs were miscalculated. See Donaldson Co., Inc., B-236795, Dec. 4, 1989, 89-2 CPD ¶ 514. Therefore, we deny this protest basis.

Fiber-Lam next contends that a "board manufacturer in Michigan" backed the awardee in "a joint venture situation," and asks for the name of the board manufacturer and whether the joint venture is eligible for the small business set-aside.

^{2/} Based on commercial quotes, Fiber-Lam states its transportation costs would be \$43,050 while Great Divide's costs are \$57,900.

An offeror's eligibility for a small business set-aside involves a matter of its size status, which our Office generally will not review. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1989). The Small Business Administration (SBA) has conclusive statutory authority to determine matters of small business size status of federal procurements. See 15 U.S.C. § 637(b)(6) (1988). However, our Office will consider whether an offeror's self-certification that it is a small business should have been challenged by the contracting officer on a particular procurement. Robertson and Penn, Inc., d/b/a Nat'l Serv. Co., 65 Comp. Gen. 874 (1986), 86-2 CPD ¶ 350. In this respect, although a contracting officer generally may accept, at face value, an offeror's self-certification, the contracting officer should refer the matter to the SBA if he has information prior to award that reasonably impeaches the certification. Creativision, Inc., 66 Comp. Gen. 585 (1987), 87-2 CPD ¶ 78.

The record here indicates that the contracting officer requested a pre-award survey of the awardee, reviewed the survey's section on the awardee's financial arrangements and saw no indication of any improper joint venture or other arrangement which would indicate that the awardee's small business certification was incorrect. On the contrary, information in the survey tended to confirm that the awardee was indeed small. Given the absence of information that would reasonably impeach Great Divide's self-certification, the contracting officer properly accepted Great Divide's small business certification as correct on its face.

Fiber-Lam also questions whether the awardee and another offeror, Great Divide Mfg., which are owned by essentially the same parties, should be allowed to submit separate offers on the same procurement. Fiber-Lam contends that it is not in the best interest of the government to allow submission of separate offers if it is possible for the lower priced offeror to withdraw its offer if the related higher priced offeror is next low.

The Army responds that it sees no prejudice to the government or other bidders in this instance, noting that the second corporation was formed "to qualify the company for 8(a) set-aside opportunities in the hope that more business can be generated." The Army states that the item being procured has not been nominated for consideration under the 8(a) program.

Multiple bidding, that is, the submission of bids on the same requirement by more than one commonly owned or commonly controlled company, or the same entity, is not objectionable

where it does not give those bidders an unfair advantage and is thus not prejudicial to the interests of the government or other bidders. Atlantic Richfield Co., 61 Comp. Gen. 121 (1981), 81-2 CPD ¶ 453 (prejudice found where awardee was to be selected by lottery, because the submission of multiple bids unfairly increased chance for award). We have found no prejudice from multiple bidding by two divisions of the same company where award was based on the lowest bid and all offerors had the same opportunity to submit the lowest bid. See Pioneer Recovery Sys., Inc., B-214700; B-214878, Nov. 13, 1984, 84-2 CPD ¶ 520. The situation here is analogous to that in the Pioneer case since award here was made to the offeror submitting the lowest evaluated price, and all offerors had the same opportunity to submit the lowest offer. We see little potential for prejudice to the government from related offerors withdrawing lower priced offers on an RFP, as is speculated by the protester, since prices under an RFP are not publicly disclosed before award. Indeed, in this case, if Great Divide had withdrawn its offer, Fiber-Lam would have been the low offeror.

In its comments on the agency report, Fiber-Lam questions whether the awardee had an opportunity to submit a best and final offer or whether it submitted its offer before the RFP closing date. Our review of the record indicates that award was made to Great Divide on the basis of its initial offer submitted by the RFP closing date.

Finally, Fiber-Lam's protest allegation concerning the use of negotiated rather than sealed bid procurements relates to an apparent solicitation impropriety which, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), must be filed prior to the closing date for the receipt of initial proposals. Benju Corp., B-228571, Nov. 4, 1987, 87-2 CPD ¶ 445. Since Fiber-Lam did not protest until after award, this aspect of its protest is untimely and will not be considered.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel