

DECISION



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

61452

FILE: B-184691

DATE: September 8, 1976

MATTER OF: Birdsboro Corporation

98070

DIGEST:

1. Protest that offerors competing for a "facilitization" contract together with a production contract were required to propose a facility to be used exclusively for the production contract is denied since RFP is not shown to have required exclusive use of the dedicated facility.
2. Protester's allegation that award to only existing source for item violates principal purpose of RFP which was to develop second source is without merit since RFP clearly did not exclude existing source but merely indicated that purpose was to develop additional production capacity for item.
3. Protester's allegations that agency erred by improperly evaluating its delivery terms, by ignoring its target price proposal in favor of ceiling prices, by failing to give proper weight to evaluation criteria of delivery and reserve capacity and by using Government price estimate to determine cost realism are not sustained since record shows that agency conducted evaluation in accordance with criteria set forth in RFP.
4. Competitive advantage gained by offeror as a result of prior performance of Government contract is not improper.
5. Protester's status as planned mobilization base producer is not relevant to question of propriety of award to another offeror.

Birdsboro Corporation protests the award of a contract to Blaw-Knox Foundry and Mill Machinery, Inc. under request for proposals (RFP) DAAE07-76-R-0073 issued by the U. S. Army Tank-Automotive Command (TACOM) on April 2, 1975. Proposals were requested for the establishment of a casting capability to produce two armor sets (hulls, turrets and gun shields)

per day for the M60 series tank ("facilitization" requirement). The RFP referenced a request for quotations (RFQ) issued simultaneously by Chrysler Corporation, the prime contractor for the M60 series, for the production of armor sets. The responses to the RFP and RFQ were to be considered together in determining the successful offeror for both awards. On July 31, 1975, award was made to Blaw-Knox for the "facilitization" effort and for the production of armor sets. On August 14, 1975, Birdsboro protested to this Office. As set forth below, we find no basis to sustain the protest.

The RFP stated that offers would be evaluated on the basis of facility costs as well as for the production costs of the armor sets. The following evaluation factors were listed in descending order of importance except as otherwise stated:

- a. Cost - including cost of facilitization and cost of production armor sets
- b. Delivery - including both facilitization and production - armor sets
- c. Technical approach
- d. Experience
- e. Reserve capacity"

The RFP further stated that cost and delivery were of equal importance. It was also stated that the total program for armor sets would be considered to be 1,440 sets and that the most probable cost to the Government of each offeror's proposal would be obtained by consideration of the following cost statements:

- "a. The most probable cost to the Government of the facilitization contract derived from analysis of offeror's proposed estimate cost with principles of cost realism applied, plus
- b. Ceiling price of offeror's firm proposal for 480 sets, plus
- c. Offeror's estimated price for an additional 950 armor sets, plus

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d. The armor sets would be assessed from a cost realism standpoint including but not limited to consideration of a learning curve."

Finally, the RFP stated that the Government intended to select that offeror whose proposal offered the best buy for the Government by providing the best balance between cost, delivery, technical approach, experience, and reserve capacity.

Four offers were received by the Army, including offers from Birdsboro, Blaw-Knox, and Scullin Steel Company (the fourth offeror later withdrew its offer). In addition, two foreign firms responded to the Chrysler RFQ, but they did not quote on the Army RFP since they did not require any facilities.

Negotiations were conducted with the offerors on the "facilitization" requirement by the Army while Chrysler conducted negotiations on the production quantity. Best and final offers were then requested and were received as follows:

	"Facilitization"	(total of 1440 sets) Production
Blaw-Knox	\$17,873,000	\$92,690,000
Birdsboro	\$26,486,000	\$110,902,160
Scullin	\$32,518,000	\$89,474,000

The foreign firms were not considered to be within the zone of consideration. Moreover, none of the offerors met the Army's desired delivery schedule as set forth in the RFP (complete delivery of hulls by September 1977, and of turrets and gun shields by August 1977). Birdsboro proposed delivery completion by January 1978, while Blaw-Knox proposed to complete its delivery by April 1978.

The final ranking of the proposals was as follows:

<u>Factor</u>	<u>Outcome</u>
Cost	Blaw-Knox
Delivery	Birdsboro
Technical	parity
Experience	Blaw-Knox
Reserve Capacity	Birdsboro

Based on this ranking and a price differential of \$11,429,000 and \$26,825,160, respectively, between Blaw-Knox and Scullin and between Blaw-Knox and Birdsboro, the Source Selection Authority

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determined that the Blaw-Knox proposal offered the best buy for the Government. Accordingly, Blaw-Knox received the award.

Birdsboro argues that its proposal was more advantageous than the proposal of Blaw-Knox in terms of delivery schedule, reserve capacity and in terms of potential quality. It lists ten specific objections to the Army's selection process.

Birdsboro first contends:

"1. The solicitation required the contractor to do all the work required and necessary to facilitate to produce rough machined armor castings for M-60 series tanks at a rate of two per day and emphasis was placed on the provision of reserve capacity for that purpose. It is clear from the RFP that the intent was to solicit exclusive use to produce armor castings. We are advised that Blaw-Knox was allowed to submit a proposal under which it financed a part of the additional facility at its own cost and that it will be allowed to use the facility for its commercial use as well as for the M-60 tank castings.

"Birdsboro was not given an opportunity to propose facilitization on a similar basis."

In effect, Birdsboro contends that the RFP required that the offeror's facility be exclusively used for the casting of armor sets and that therefore Blaw-Knox was given an unfair advantage because it was allowed to propose a facility which could be used by the contractor for its own purposes as well. In response, the Army states that page D-2 of the RFP (in reference to cost realism) provided that if an offeror wanted "to absorb a portion of the estimated cost, this should be stated in the proposal." We do not believe that this RFP provision would put offerors on notice that a proposed facility could be used for commercial purposes. On the other hand, the protester has not cited any provision of the RFP which required exclusive use of the offeror's facility. In the absence of such a provision we are unable to conclude that the RFP required a facility which would be dedicated exclusively to the M-60 tank castings.

Birdsboro's second contention is:

"2. We understand that in its evaluation of the proposal, the Government evaluated the delivery advantage of Birdsboro over Blaw-Knox

by estimating the extra costs the Government would incur by acquiring makeup castings from another source, possibly foreign. We do not know whether it was ever determined that any such contemplated source was a responsible bidder. Further, it does not appear that in evaluating Birdsboro's price against Blaw-Knox's price plus the cost of makeup delivery from foreign sources, the Government either properly weighted the foreign source procurement by the 50% factor required by the Buy American Act, or made adequate allowance for the possibility of having to purchase those castings from United States sources at prices up to 50% higher than the quotes from potential foreign sources because of Buy American Act considerations."

As the Army states, however, proposals were evaluated in accordance with the RFP criteria. Extra costs due to Birdsboro's delivery advantage were not evaluated because such costs were not listed as a factor in the cost evaluation. Rather, cost proposals were evaluated based on a quantity of 1,440 sets as specified. We see no merit to this contention.

Birdsboro next contends:

"3. The clear public position of the Army has been that a principal purpose of the RFP was to develop a competitive, dependable second source, and the award to that firm under the subject RFP is clearly contrary to that stated purpose. The Army will lose the benefit of future price and quality competition and can lose all of its production because of, for example, a single labor difficulty."

The RFP merely stated that the primary objection was to establish a casting capability "in addition to that currently contracted for." (Paragraph A01 of the RFP, Executive Summary.) The RFP did not specify that the current contractor could not submit a proposal, nor did the RFP provide that the successful offeror would have to be a separate entity from that of the current contractor. As Army states, its intent was to obtain additional casting capability, and the RFP did not indicate any more than this.

The next contention is that:

"4. The RFP proved not to be competitive. Blaw-Knox had the very substantial advantage of first-hand knowledge of the difficulty inherent in the design in attempting to satisfy ballistic, inspection, quality, and other acceptance requirements and a knowledge of the existing price structures. This information was denied Birdsboro. It allowed Blaw-Knox to set its ceiling price with a far smaller contingency factor."

We have recognized that a firm may enjoy a competitive advantage by virtue of its incumbency or its own particular circumstances. As we stated in B-175496, November 10, 1972, however, there is no requirement for equalizing competition by taking into consideration these types of advantages. Aerospace Engineering Services Corp., B-184850, March 9, 1976, 76-1 CPD 164. So long as Blaw-Knox was not given preferential treatment in the competition, its competitors have no basis to object merely because of its advantage as the existing source.

Next, Birdsboro contends that:

"5. The Army established an evaluation method which essentially ignored target price proposals under which Birdsboro's proposal should have been more properly evaluated and would have proved to be more advantageous to the Government."

Section D of the RFP stated that the ceiling price of an offeror's proposal for 480 armor sets would be one of the factors in determining the most probable cost to the Government. Moreover, the file indicates that proposals were assessed from a cost realism standpoint. For example, with regard to the additional quantity of 960 sets, the file shows that Birdsboro's cost proposal was evaluated as follows:

"Birdsboro submitted an alternate quote on a CPFF basis, without ceiling, of \$38,185,300. This was not in compliance with the solicitation. However, the target of \$38,185,300 offers a realistic base for the estimated price of the 960 armor sets. When all the non-recurring costs are extracted, a total amount of \$31,337,610 or \$65,286 [per set] remains. This base cost of \$65,286 was further reduced by 5% for learning to \$62,021 and used to evaluate the cost of 960 armor sets (\$59,540,160 Total Amount)."

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Based on the above, it appears to us that the cost proposals were evaluated consistent with the RFP criteria. Therefore, we see no merit to Birdsboro's contention.

The sixth contention is as follows:

"6. The Army did not give sufficient weight to the factors of delivery, reserve capacity and quality for which Birdsboro's proposal was clearly advantageous, and these factors appear to have been ignored in the negotiation between the original offer and the best and final offer.

"The RFP stated that cost and delivery were to be evaluated equally. By the third quarter of 1977, deliveries to armor sets by Birdsboro would exceed the 60% deliveries by Blaw-Knox. Reserve capacity of the facilitization proposed by Birdsboro was three and a half times the reserve capacity of Blaw Knox's, and as indicated in our proposal this reserve capacity, with a minimum expenditure, could be increased another 200%.

"In a procurement where both time and cost are important factors, it is proper to make an award to a higher bidder who can deliver at an earlier date and reject the bid at the lower price but later delivery.'
Controller General's decision B-146398 (1961)."

As indicated above, Blaw-Knox predominated in the cost area as well as in experience. Birdsboro, on the other hand, was superior in its delivery schedule and in its reserve capacity (technical approach was equal). It is clear that the Source Selection Authority had to weigh the Blaw-Knox cost advantage against Birdsboro's superior delivery. A matter of judgment was involved, which we may not question in the absence of a showing of unreasonableness. Lockheed Propulsion Company, 53 Comp. Gen. 977, 1051 (1974), 74-1 CPD 339. The decision cited by the protester (B-146398, published at 41 Comp. Gen. 351 (1961)) is not inconsistent with this view. There the contracting agency accepted a proposal offering tires at a unit price of \$427.60, with delivery to be completed by the end of 1961, in preference to an offer of \$420

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per unit with delivery extending into 1962. In that case, the agency had a critical need for the items by the end of 1961, and we found no basis to object to the agency's action. Here however, the Army chose a possible \$26,825,160 cost saving over a possible earlier delivery. According to the Army, urgency of delivery was not such as to justify the payment of this price differential for a promise of earlier delivery. Therefore, the determination was made that Blaw-Knox offered the best buy for the Government. We cannot say that this determination was unreasonable.

The next contention is as follows:

"7. Birdsboro Corporation proposed to facilitate a plant which it leases to Birdsboro, Pennsylvania, and which it is being required to retain in the mobilization base for tank castings until 1982. Birdsboro has maintained that facility since 1972 at its own expense based upon oral commitments made by the Government at the time it sold the plant, that it would be called upon to make tank castings. The award to Blaw-Knox ignores, and if allowed to stand we submit nullifies, that requirement to retain Birdsboro's facility in the mobilization base."

The sales agreement, the Army maintains, is a separate action and is not superseded by this procurement. (In this regard, the Army states that it may have a number of planned producers for an item even though only one of them may be actually producing.) We agree with the Army that Birdsboro's status as a planned mobilization base producer is not relevant to the question of whether award to Blaw-Knox was proper for this procurement.

Birdsboro next contends:

"8. Evaluation of Birdsboro's proposal for the production of cast armor on the basis of the ceiling price for 480 sets is meaningless, improper and against the best interests of the Government. Birdsboro's proposal was on a cost-plus fixed-fee basis with a target price, including the fixed fee, approximately equal to Blaw-Knox's ceiling price. The factors and the accounting methods which entered into Birdsboro's computation of the target price

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were disclosed to and approved by the Government. In the event of an award to Birdsboro, the allowable costs would have been subject to the same requirements for disclosure and approval, and barring unknown contingencies and unusual circumstances, would be expected to approach or even fall below Birdsboro's target price. In the absence of meaningful data concerning past experience with rejections on ballistics, tolerances, inspection and other acceptance criteria being available to Birdsboro on a basis equal to all of the other bidders, a ceiling price is an arbitrary and fictitious value which would have little direct relation to Birdsboro's actual delivered price, since Birdsboro had to provide for all unusual contingencies and worst conditions to quote a guaranteed ceiling. During negotiations Birdsboro was not provided with information concerning the experience of other suppliers of those castings with respect to rejections or with information on the current price being paid for those castings as a guide for establishing a risk factor to be added to expected price performance.

"The evaluation of Birdsboro's proposal solely on ceiling price without consideration of the more meaningful target price prevented the Government from properly considering this proposal from a qualified competitive second source."

Army states that a ceiling price was imposed in order to ascertain the Government's ultimate liability. Moreover, it states that information concerning the terms, including tolerances, ballistics and acceptance criteria, was furnished to all offerors. Based on the record, it does not appear that Birdsboro's cost proposal was evaluated in an unreasonable manner. As indicated above, each of the proposals was assessed from the standpoint of cost realism. Therefore, we do not agree with Birdsboro's allegation.

Birdsboro's next contention is that:

"9. For its comparison of prices for castings beyond the first 480, the Government compared prices it obtained from Blaw-Knox against assumed prices, estimated by the Government, for Birdsboro which were higher than those which would have resulted from information which would actually have been used by Birdsboro to determine them."

The Army, on the other hand, believes that it developed a reasonable method for projecting prices on the follow-on quantity of 960 armor sets. Each offeror's price was reduced by 5% based on a learning curve application. We do not find that this approach is unreasonable.

Finally, Birdsboro contends that:

"10. The Government in considering the combination of facility costs and ceiling price of the two offers, did not appear to give proper consideration to the capability of the facility proposed by Birdsboro to produce castings earlier and at a faster rate, although 'realism' in the design of the facility, in accordance with the Government's requirements and 'reserve capacity' were constantly stressed in the RFP and related negotiations, and the RFP specified that in the evaluation of the proposals, facilitization costs and price of castings would be given equal weight."

Here again, Birdsboro suggests that the Army did not give proper weight to delivery and reserve capacity. The file shows, however, that proposals were evaluated in accordance with the established criteria.

Accordingly, Birdsboro's protest is denied.

Acting


Comptroller General
of the United States