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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Hawkeye Glove Manufacturing, Inc.

File: B-299741

Date: August 2, 2007

Marc Lamer, Esq., Kostos & Lamer, PC, for the protester.
Carol L. O’Riordan, Esq., The O’Riordan Bethel Law Firm, LLP, an intervenor.
Maria Ventresca, Esq., Defense Logistics Agency, for the agency.
Julie D. Miller, and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where solicitation divided requirement for gloves into two portions—one set aside for small business and the other unrestricted—and stated that agency intended to make multiple awards, agency nevertheless was not required to make multiple awards; agency properly awarded both portions of requirement to offeror whose proposal received highest technical score and offered lowest total price.

DECISION

Hawkeye Glove Manufacturing, Inc. (HGMI) protests the award of a contract to Nationwide Glove Company (NGC) under request for proposals (RFP) No. SPO100-06-R-0057, issued by the Defense Logistics Agency (DLA) for quantities of gloves.

We deny the protest.

The RFP, issued on May 9, 2006, was divided into two portions; 60 percent of the total quantity (including an option quantity) was set aside for small businesses and 40 percent (with option quantity) was unrestricted, with indefinite-delivery, indefinite-quantity terms applying to each. The RFP provided for a “best value” evaluation, taking into consideration five factors (and price) for the unrestricted portion, and three factors (and price) for the set-aside portion. RFP at 58. The solicitation also stated as follows:

In the event that the proposals received for the 60% portion are not found to be technically acceptable and/or priced fair and reasonably, the Government reserves the right to dissolve this set aside portion and

make the 60% portion unrestricted. It is the Government's intention on this acquisition to make multiple awards.

Id. at 8.

The agency received three proposals for the set-aside portion, including HGMI's and NGC's, and four for the unrestricted portion, including HGMI's and NGC's. The source selection authority (SSA) evaluated the proposals for each portion separately, and determined that NGC's proposals for both were technically superior to HGMI's and the other offeror's proposals. NGC's proposed prices also were the lowest for both portions; for the set-aside portion, its evaluated unit price was \$13.93, as compared to HGMI's second-lowest price of \$14.52, and for the unrestricted portion, its price was \$13.93, as compared to HGMI's second-lowest price of \$14.74. Agency Report (AR), Tab 4, Source Selection Decision Document, at 2. In addition, NGC offered a price of \$13.79 for the total quantities under both portions. Id. Based on these evaluation results, the SSA determined that it was in the agency's best interest to make a single award to NGC. Specifically, the SSA stated,

Although the solicitation states, "It is the Government's intention on this acquisition to make multiple awards," there is no place in the solicitation that mandates that multiple awards shall be made. Thusly, I find that awarding 100 percent of the contract to Nationwide Glove Company represents a better value to the Government and a very good probability of successful contract performance.

Id. at 14-15.

On January 22, 2007, the agency notified HGMI that both portions of the contract would be awarded to NGC. HGMI received a debriefing on January 23, where it was informed that its price was second low for both portions of the requirement. On February 1, HGMI filed an agency-level protest objecting to the award of both portions to NGC. The agency denied the protest and, on April 30, HGMI filed this protest with our Office.

HGMI asserts that awarding NGC both portions of the requirement was inconsistent with the agency's stated intent in the RFP to make multiple awards, and therefore was improper. HGMI alleges that it was prejudiced by the "government's deviation from the clear intention of the solicitation." Id. at 4. HGMI claims that, had it known that a single award for both portions could be made, it would have offered a 100 percent pricing option at a lower price.¹

¹ HGMI initially argued that the requirement is a partial small business set-aside that was subject to Federal Acquisition Regulation § 19-502.3, under which, it asserted, HGMI would be entitled to award of the set-aside portion. The agency responded in
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HGMI's argument is without merit. Even where a solicitation specifically states an intention to award multiple contracts, it does not impose on the agency a legal obligation to make more than one award. The METEC Group, B-290073, B-290073.2, May 20, 2002, 2002 CPD ¶ 86 at 2; Allied-Signal Aerospace Co., B-240938.2, Jan. 18, 1991, 91-1 CPD ¶ 58 at 2. Rather, an agency's expression of intent merely demonstrates its expectation that it will make multiple awards. Canadian Commercial Corp./Liftking Indus., Inc., B-282334 *et al.*, June 30, 1999, 99-2 CPD ¶ 11 at 6. Therefore, the mere fact that the RFP here stated that the agency intended to make multiple awards did not require it to make separate awards for the set-aside and unrestricted portions of the requirement.²

In any case, we point out that the RFP contained a provision--clause 52.216-9P23(a)--stating that "The Government intends to make multiple awards under this solicitation.... The Government, however, reserves the right to make only one award." AR, Tab 2, at 41. Based on this language, we think it was clear that the agency anticipated making multiple awards, but did not intend to bind itself to do so. Moreover, even if we agreed that the agency could be bound by a stated intent to make multiple awards, this language, at a minimum, created an ambiguity on the face of the RFP as to the agency's intent. HGMI could not merely adopt one of the alternative interpretations but, rather, was required to seek resolution of this ambiguity in a protest filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2 (a)(1) (2007); Deco Sec. Servs., B-294516, Nov. 1, 2004, 2004 CPD ¶ 224.

Finally, as for HGMI's claim that it would have offered a 100-percent pricing option, as did NGC, had it been aware of the possibility of a single award, nothing in the solicitation prohibited offerors from providing such pricing. Further, as discussed,

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its report that this was a total small business set-aside, not a partial set-aside, and that the cited provisions did not apply. In its response, the protestor does not specifically dispute the government's position. We therefore consider it abandoned. See International Marine Prods., Inc., B-296127, June 13, 2005, 2005 CPD ¶ 119 at 5 n.3. In any case, the RFP specifically identified the set-aside as a total, rather than a partial, set-aside, supporting the agency's position. RFP at 1.

² HGMI attempts to distinguish our prior decisions based on the different facts involved. However, our decisions in this area are not fact-specific. Thus, for example, while HGMI asserts that our decision in Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13, is distinguishable from its protest because, there, only one technically acceptable offer was received, our decision was not based on the number of proposals received. Rather, we held, as a general proposition, that a statement of intent to make multiple awards expresses only an expectation, and does not create a legal obligation to make multiple awards. *Id.* at 5.

the agency's reserving the right to make a single award actually put HGMI on express notice of the possibility of a single award. We note that HGMI concedes that it has previously submitted pricing based on 100 percent of the award in other solicitations that indicated multiple awards might be made. Protest at 4-5. We conclude that there is no basis for objecting to the award to NGC.

The protest is denied.

Gary L. Kepplinger
General Counsel