



Comptroller General
of the United States

Washington, D.C. 20548

Lebowitz
145222

Decision

Matter of: EMCO, Inc.
File: B-244649
Date: October 28, 1991

M. D. Blood for the protester,
Major William R. Medsger and Thomas F. McGhee, Esq.,
Department of the Army, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest is denied where agency reasonably justified limiting competition under solicitation for grenade metal parts to mobilization base producers without a current fiscal year production contract.

DECISION

EMCO, Inc. protests the award of a contract to Heckethorn Manufacturing Company under request for proposals (RFP) No. DAAA09-91-R-0726 (RFP-0726), issued by the United States Army Armament, Munitions and Chemical Command for a quantity of grenade metal parts to be used in the Multiple Launch Rocket System (MLRS). EMCO protests the agency's decision to limit competition to those mobilization base producers without fiscal year (FY) 1991 production contracts.

We deny the protest.

For FY 1991, the agency issued two solicitations for the production of various quantities of grenade metal parts. On February 19, 1991, the agency issued RFP No. DAAA09-91-R-0037 (RFP-0037) to the five current mobilization base producers--EMCO, Valentec Kisco, Heckethorn, Amron Corporation, and NI Industries, Inc.--for a quantity of 29 million items. The agency, on April 18, awarded contracts to EMCO and Valentec Kisco for the respective approximate quantities of 13 million and 16 million items.

On May 17, the agency issued RFP-0726 to the three mobilization base producers which had not received awards under RFP-0037--Heckethorn, Amron, and NI Industries--for a supplemental quantity of nearly eight million items.

Heckethorn and Amron submitted offers. Following negotiations and the receipt of best and final offers, the agency, on June 25, awarded a contract to Heckethorn. On July 1, EMCO filed this protest.

EMCO argues that it was improperly excluded from competing under RFP-0726. In this regard, EMCO refers to clause H-18 in RFP-0037 which was referenced in RFP-0726 and stated that an offeror not receiving an award under RFP-0037 would be placed in layaway status. EMCO argues that since Heckethorn, Amron, and NI Industries did not receive awards under RFP-0037, the production lines of these three firms should have been placed in layaway status, and these firms should not have been afforded the opportunity to compete under RFP-0726. Rather, EMCO argues, the competition under RFP-0726 should have been limited to EMCO and Valentec Kisco, the awardees under RFP-0037. EMCO believes it was in a "must win" position for the award of any supplemental contracts based on its award under RFP-0037, since the other three competitors should have been placed in layaway status.

The agency prepared a justification and approval (J&A) for the use of other than full and open competition as required by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(f) (1988). The J&A cited the authority of 10 U.S.C. § 2304(c)(3), which allows the head of a military agency to use other than competitive procedures in awarding a contract to a particular source or sources when such action is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization.

The J&A explained that there are currently five mobilization base producers of the grenade metal parts. These parts are combat essential and are deemed a component of a critical mobilization item. The J&A noted that only two of the five mobilization base producers--EMCO and Valentec Kisco--had received FY 1991 awards (under RFP-0037) which would enable them to maintain active production until August 1992. The J&A further explained that the competition under RFP-0726 would be limited to those three mobilization base producers without FY 1991 awards--Heckethorn, Amron, and NI Industries¹--in order to ensure the availability of at least one of them in the event of a national emergency or mobilization. The J&A stated that due to a decline in funding, the Army has had to accept a smaller number of

¹ NI Industries has been in layaway status since July 1990, and because it would have had to absorb the costs of reactivating its production line, it did not submit an offer under RFP-0726.

active producers in the base than the five producers its mobilization projections justify. However, the Army seeks to maintain as many producers as it reasonably can for as long as it can, subject to funding availability. With respect to Heckethorn and Amron, the J&A essentially stated that unless these mobilization base producers received FY 1991 awards, by August 1991, upon completion of their respective FY 1990 contracts, the production lines of these two firms would be placed in layaway status due to a lack of continuous active production. This would result in a loss of critical skills and operational production facilities necessary in the event of a national emergency or mobilization.

Decisions as to which and how many producers must be maintained in the mobilization base and the decision whether facilities must be kept active or whether mobilization needs will allow certain facilities to be inactivated and the workforce released are the responsibility of the military agencies. This Office will question those decisions only if the record shows that the agency has acted unreasonably. EMCO, Inc., B-240070.2, Sept. 19, 1990, 90-2 CPD ¶ 235.

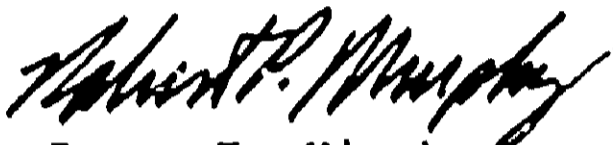
Here, the agency's analysis reveals a need for as many as five mobilization base producers, depending upon the available funding. For this reason, the agency decided to restrict competition for the supplemental FY 1991 quantity of grenade metal parts to the three mobilization base producers without FY 1991 contracts in order to maintain the maximum number of active producers. We find the agency's position reasonable and in accordance with 10 U.S.C. § 2304(c)(3).

With regard to the effect of clause H-18, it did literally state that a mobilization base producer not awarded a contract would be placed in layaway status. We think, however, that the only reasonable interpretation of this provision is that it placed firms on notice that they would be placed in layaway status when their production obligations were over, not that they would be placed in layaway status simply because they did not receive an award under RFP-0037, and not that they were precluded from receiving further awards. Such an interpretation would be inconsistent with the mobilization base program, the purpose of which is the maintenance of adequate production capability to meet wartime needs. Here, the Army clearly sees a need for more than two production lines for these grenade metal parts, and both Heckethorn and Amron had active production lines due to prior contract awards. Thus, the protester cannot rely on clause H-18 as a basis for excluding Heckethorn, Amron, and NI Industries from the competition and instead limiting the competition to itself and Valentec Kisco.

To the extent EMCO complains that the agency is paying a premium price for its supplemental requirement, the agency recognizes that in order to maintain the maximum number of active mobilization base producers in the event of a national emergency or to achieve industrial mobilization, it often has to pay a premium price. In fact, the record shows that in making the two initial FY 1991 awards, the agency paid a 9 percent price premium to EMCO.

Therefore, we find the agency reasonably limited the competition for the supplemental quantity of items to the mobilization base producers without current fiscal year production contracts.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel