

DECISION



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

FILE: B-216495 **DATE:** February 4, 1985
MATTER OF: MII/Lundia

DIGEST:

An agency which is a mandatory user of a multiple-award federal supply schedule (FSS) contract may purchase lower priced non-FSS items which are identical (in terms of make and model) to those included on the FSS contract from the schedule contractor that submitted the low quote under the original request for quotations. There is nothing in the Federal Acquisition Regulation which would compel the agency to recompute the non-FSS items.

MII/Lundia protests the Department of the Army's issuance of a purchase order for certain items of mobile shelving to Advance Manufacturing Corporation. Quotations were originally solicited under request for quotations (RFQ) No. DADA-15-84-Q-0515. Lundia contends that the Army issued the purchase order without obtaining adequate competition. We deny the protest.

The Army issued the RFQ on April 26, 1984, seeking quotations from four firms--including Lundia and Advance--who hold multiple-award, mandatory federal supply schedule (FSS) contracts^{1/} for the shelving being acquired. The RFQ was issued on a brand name or equal basis, with the Lundia product specified as the brand. Four quotes were received, but two of them were rejected for noncompliance with the specifications. Both Advance and Lundia offered acceptable products with Advance submitting the low quote at \$36,907.00. Lundia was second low at \$38,896.50. Accordingly, the Army issued a delivery order for the shelving to Advance on July 23.

^{1/}FSC Group 71, Part III, Section J, FSC Class 7125.

Shortly thereafter, Lundia protested to the Army that certain items of the shelving offered by Advance were in fact not on that firm's FSS contract. Advance acknowledged that this was the case and, by a modification dated September 19, those items, representing about 30 percent of the total acquisition, were deleted from the delivery order. However, on September 24, the Army issued a purchase order to Advance for the deleted items at a price of \$11,316.95, which was lower than Lundia's FSS contract price for the items.

Analysis

Lundia asserts that the Army improperly acquired the non-schedule items from Advance without obtaining competition. In this regard, Lundia refers to the Federal Acquisition Regulation (FAR), § 8.404-1, 48 Fed. Reg. 42,102, 42,135 (1983) (to be codified at 48 C.F.R. § 8.404-1), which sets forth the particular circumstances where the mandatory use of a multiple-award schedule by an executive agency is not required. Subsection (e) of that section provides:

"Lower prices for identical items.

(1) When an ordering office finds that an identical product (make and model) included on a multiple-award schedule is available from another source at a price lower than the schedule price, the office may purchase the item subject to the requirements to obtain competition. . . ."2/

Lundia argues that the language used in subsection (e), "subject to the requirements to obtain competition,"

^{2/}Lundia originally urged that the non-schedule items furnished by Advance were not identical to those on Lundia's FSS contract. After a series of meetings with the Army, Lundia conceded that Advance's items were in fact identical to Lundia's shelving in terms of make and model.

compelled the Army to recompetete the non-schedule shelving items, rather than issue a purchase order for them to Advance. Lundia implies that it would have quoted a lower price for these items under a recompetition than it quoted when responding to the original RFQ, which contemplated a 100 percent FSS buy. We see no merit in the firm's argument.

We have held in a similar situation that an agency may award a combined contract for FSS and non-FSS items to an offeror who submitted the low aggregate quote. Synergetics International, Inc., B-213018, Feb. 23, 1984, 84-1 CPD ¶ 232. In that case, the protester had alleged that the successful offeror had misrepresented that certain products and services were on its FSS contract. The protester claimed that because an award was made for these non-schedule items on the basis of the offeror's low quote, the agency violated the prohibition against awarding contracts on a noncompetitive basis. We did not accept the protester's argument since the agency showed that it would have acquired the non-FSS items in any event from the successful offeror due to compatibility considerations, even if it had known that the items were not on the firm's schedule, and since the cost of the non-FSS items was small compared with the total cost of the procurement.

We do not think that the present situation is fundamentally different. Here, both Lundia and Advance responded to the original RFQ by quoting prices for the entire requirement, and Advance was the low offeror. When the Army learned as the result of Lundia's protest that 30 percent of the requirement was not on Advance's FSS contract, the Army deleted that portion from the initial delivery order and awarded those items to Advance separately. Lundia has made no affirmative showing that it would have offered a price lower than Advance's for those items if it had had an additional opportunity to do so. We assume that Lundia's original quote, contemplating a 100 percent FSS buy, represented the firm's best offer to the government, since multiple-award schedule contracts such as that held by Lundia are negotiated on the basis of discounts offered by the contractor from its established catalog prices. Although it is true that Lundia could have offered to supply the shelving items listed on its FSS contract, offered by Advance as non-FSS items, at

lower prices than the schedule prices, Synergetics International, Inc., supra, we point out that, under the standard price reduction clause that is contained in all multiple-award FSS contracts, any such reductions would have been applicable to all future orders of these items by the government during the FSS contract period. See GSA--Multiple Award Schedule Multiyear Contracting, B-199079, Dec. 23, 1983, 84-1 CPD ¶ 46. In our view, nothing in the record establishes that Lundia would have reduced its FSS prices to become the low offeror for these items if they had been recompeted, and the firm thus was not prejudiced because the Army did not do so.

In any event, we cannot reasonably construe FAR, § 8.404-1(e), supra, to require such a recompetition. In other words, Lundia had the opportunity, through open competition, to reduce its FSS prices had it chosen to do so. We do not believe the regulation requires that Lundia be given another opportunity to compete under the circumstances.

We also note that the acquisition of the non-FSS items was, given the dollar amount involved, a small purchase procurement. Because small purchase procedures are designed to minimize the administrative costs of acquiring relatively inexpensive items, thus affording contracting officers a wide degree of discretion, we have held that agencies need only solicit quotations from a reasonable number of potential sources, judge the advantages and disadvantages of each quotation in relation to the prices quoted, and determine in good faith which quotation will best meet the needs of the government. R.E. White & Associates, Inc., 61 Comp. Gen. 320 (1982), 82-1 CPD ¶ 294. Here, the Army clearly fulfilled its obligation to solicit a reasonable number of quotations by originally soliciting the four FSS contractors, since we note that the small purchase procedures contemplate that the solicitation generally should be limited to three suppliers.^{3/} Hence, we conclude that the Army in turn


^{3/}See FAR, § 13.106(b)(5), 48 Fed. Reg. 42,102, 42,165 (1983) (to be codified at 48 C.F.R. § 13.106(b)(5)).

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met its obligation under FAR, § 8.404-1(e), supra, "to obtain competition."

Accordingly, we cannot find that the purchase order for the non-FSS shelving items was issued to Advance on a noncompetitive basis so as to make the award legally objectionable.

The protest is denied.

for 
Comptroller General
of the United States