



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hentzen Coatings, Inc.

File: B-274317

Date: December 2, 1996

William E. Hughes III, Esq., Whyte, Hirschboeck, Dudek, for the protester.

M. Sherman Drew, Jr., Niles Chemical Paint Co., Inc., an intervenor.

Emily Hewitt, Esq., and Elizabeth L. Kruger, Esq., General Services Administration, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of a contract to the offeror of the higher-priced proposal was proper where: (1) the request for proposals indicated that proposals would be evaluated on two factors—delivery and price—and that delivery was more important than price; and (2) the contracting officer reasonably determined that it was worth spending additional money to obtain the entire quantity of urgently required camouflage coating kits faster under the awardee's accelerated delivery schedule.

DECISION

Hentzen Coatings, Inc. protests the General Services Administration's (GSA) award of a contract for waterborne polyurethane camouflage coating kits to Niles Chemical Paint Co. pursuant to request for proposals (RFP) No. TFTP-96-DS-2000.¹ The protester contends that a proper evaluation of proposals would have resulted in award of the contract to Hentzen on the basis of its lowest-priced proposal.

We deny the protest.

Issued on July 12, 1996, the RFP solicited offers for supplying 16,400 waterborne polyurethane camouflage kits.² Each kit consists of two separate components that

¹GSA has an agreement with the Department of Defense under which GSA procures the coating material for use by the Marine Corps.

²Citing the unusual and compelling urgency exception to the general requirement for full and open competition, 41 U.S.C. § 253(c)(2), GSA issued the RFP to four prospective offerors only.

are mixed together and then painted on various types of Marine tactical equipment, including troop carriers and other vehicles, artillery, and support equipment. The waterborne polyurethane mixture is used as a finish coat on military equipment because it provides a surface that is easily and effectively decontaminated after exposure to liquid chemical agents. The waterborne polyurethane coating specification is a new specification intended to replace the solvent borne chemical agent resistant coating that had previously been used to coat Marine Corps equipment; the old solvent can no longer be used due to environmental regulations. The RFP stated that offers would be evaluated on the basis of two factors--time of delivery and price--and advised that the agency might award a contract on the basis of initial offers.

After evaluating the four proposals received, the contracting officer decided to make award on the basis of initial proposals. Hentzen's total offered price of \$464,719 was the lowest; Niles's total offered price of \$569,228 was second-lowest.³ Niles proposed to deliver the entire requirement (i.e., all 16,400 camouflage coating kits) just 35 days after receipt of order; Hentzen proposed a staggered delivery schedule in which varying portions of the camouflage coating kit requirement would be delivered at 22, 25, 27, 30, and 45 days after receipt of order.⁴

The contracting officer determined that Niles's accelerated delivery schedule was better than Hentzen's and that it was worth spending an additional \$104,509 to obtain faster delivery of the entire requirement from Niles. Even though Hentzen proposed to deliver some of the camouflage coating kits faster than Niles, the contracting officer noted that Niles offered to complete delivery of all required kits to the Georgia base 13 days faster than Hentzen and to the California base 10 days faster than Hentzen. The contracting officer also noted that Niles's price for delivery to the Georgia base was only about 22 percent more than Hentzen's price and that Niles's price for delivery to the California base was only about 23 percent more than Hentzen's. The contracting officer determined that Niles's prices were reasonable because they were within the price objectives previously established by the agency (i.e., Niles's prices were close to the low end of the price range the agency had established by means of an informal market survey for negotiating

³All figures are rounded off to the nearest dollar.

⁴The RFP contained six separate line items representing three different colors of camouflage coating kits to be delivered to two different Marine Corps logistics bases. Thus, line items 1a, 1b, and 1c, respectively, were for various quantities of red, black, and brown camouflage kits to be delivered to the Marine Corps logistics base at Albany, Georgia, and line items 2a, 2b, and 2c, respectively, were for various quantities of red, black, and brown camouflage kits to be delivered to the Marine Corps Logistics Base at Barstow, California.

purposes) and because the contracting officer believed that Niles's higher prices were justified since Niles would have to incur additional effort and expense to meet its accelerated delivery schedule. Therefore, on August 7, the contracting officer awarded the contract to Niles.

Hentzen contends that it should have been awarded the contract because it offered to deliver substantial quantities of the camouflage coating kits before Niles's earliest proposed deliveries, because it proposed to deliver all of the camouflage coating kits in less than the 60 days required under the RFP, and because its total proposed price was \$104,509 less than Niles's total proposed price. Thus, Hentzen asserts that its proposal was superior to Niles's proposal regarding both delivery and price.

The evaluation of proposals is primarily within the discretion of the procuring agency, not our Office; the agency is responsible for defining its needs and the best means of accommodating them and must bear the consequences of a defective evaluation. HospitalKlean, Inc., B-245158 et al., Dec. 17, 1991, 91-2 CPD ¶ 550; PW Constr., Inc., B-272248; B-272248.2, Sept. 13, 1996, 96-2 CPD ¶ 130. Consequently, our Office will question an agency's evaluation of proposals only if the evaluation lacks a reasonable basis or is inconsistent with the RFP's evaluation criteria. SRS Technologies, B-270341.2, Mar. 1, 1996, 96-1 CPD ¶ 120. A protester's mere disagreement with the agency does not establish that the evaluation was unreasonable. Id.

The RFP stated that there was an urgent and compelling requirement for all 16,400 waterborne polyurethane camouflage coating kits and that:

"Delivery is required within 60* calendar days after receipt of order.
***If you are able to offer less, please indicate: ____ (See method of award below).**" [Emphasis in original.]

The RFP also stated that delivery schedule and price were the only significant evaluation factors for award and specified that delivery schedule was considered more important than price. Thus, reading the RFP as a whole, it was clear that, even though GSA was willing to accept delivery as late as 60 days after an order was placed if necessary, proposals offering accelerated delivery schedules could be more favorably evaluated than lower-cost proposals offering only the 60-day required delivery schedule.

In view of the Marine Corps's urgent need for the camouflage kits and the RFP's emphasis on the importance of accelerated delivery over price, we cannot find unreasonable the contracting officer's decision to award the contract to Niles. The agency's statement of unusual and compelling urgency justifying procuring on the basis of limited competition specifically states that the Marine Corps has decided that it will no longer use solvent borne chemical agent resistant coating on its

equipment in order to comply with environmental regulations. The justification statement also specifies that neither the Marine Corps nor GSA had any waterborne polyurethane camouflage coating materials--the replacement for the solvent based camouflage coating material--in stock. Thus, the justification states that the Marine Corps had "an extremely urgent need" to obtain 16,400 waterborne polyurethane camouflage coating kits immediately for use on its tactical equipment until GSA could set up a mechanism to procure large quantities of the material for use in the long term.

Furthermore, the record shows that the new coating material is critical to the Marine Corps's mission. According to the Marines:

"[A] failure to paint the equipment precludes their use and thus renders the equipment unavailable. This is causing a severe negative impact to mission readiness and is essentially preventing the use of millions of dollars worth of equipment. The equipment must be coated to allow them to be available in the event of a national emergency. Use of the equipment without proper coatings could lead to premature corrosion of equipment, reduced performance of equipment, and a detriment to the safety of human life, possibly resulting in death."

The record also shows that at about the time the RFP was issued, the contracting officer had several telephone conversations with personnel at the Naval Surface Warfare Center; the gist of the conversations was that due to tension in Bosnia and a recent bombing in Saudi Arabia, it was critical that tactical equipment be coated and ready for deployment.

In short, in these circumstances, the contracting officer could reasonably decide that it was worth spending an extra \$104,509 to obtain the entire urgently needed quantity 10 to 13 days faster from Niles. See, e.g., Miltope Corp.; Aydin Corp., B-258554.4 et al., June 6, 1995, 95-1 CPD ¶ 285.

The protest is denied.

Comptroller General
of the United States