

Protest of) Date: August 23, 1991
CARTER CHEVROLET AGENCY, INC.)
Solicitation No. 104230-91-A-0074) P.S. Protest No. 91-39

DECISION

Carter Chevrolet Agency, Inc. ("Carter") protests the award of a contract for cargo van trucks under Solicitation No. 104230-91-A-0074. The solicitation was issued by the Office of Procurement, Headquarters, on April 23, 1991, with an offer due date, as amended, of June 11. Section M.1 stated that award would be made "to the responsible offeror whose proposal conforms to the solicitation requirements and provides the lowest total overall cost to the Postal Service."

On June 10, the contracting officer received a letter from Carter protesting the terms of the solicitation as being restricted to a Volvo-GMC chassis, and asserting that Volvo-GMC was restricting competition by refusing to provide pricing to qualified dealers other than Weber's White Volvo-GMC. The protest contended that the consequence of the restrictive specification and Volvo-GMC's action would be to limit the Postal Service's choice of contractor and establish the price the Postal Service would have to pay. The letter requested extension of the date for the receipt of offers pending resolution of the protest.

By letter dated June 11, the contracting officer denied Carter's protest as obviously without merit. Although the basis for that conclusion was not explicit, the letter appears to conclude that the specification was not restricted to the Volvo-GM chassis since three out of the five offers received were for vehicles other than the Volvo-GM chassis. The letter stated that Carter's objections to Volvo-GMC's exclusive dealings with another dealer was an "antitrust implication . . . in the province of the Federal Trade Commission, not the Postal Service."

The five offers received were reviewed, and the lowest offeror was disqualified. On July 9, award was made to Ford Motor Company, who submitted the second lowest technically acceptable proposal. The proposal of Weber's White Volvo-GMC was the third lowest proposal; Carter's was fourth.

On June 19, the contracting officer received a letter from Carter requesting

reconsideration of his decision denying the protest. The contracting officer has referred the request to this office. We consider the protest pursuant to Procurement Manual (PM) 4.5.4 e.

In its request, Carter refers to PM sections 1.8.1 and 1.8.2 dealing with anticompetitive practices.^{1/} Carter states that although it submitted an offer, its offer could not be competitive because the truck chassis manufacturer, Volvo-GMC, declined to provide Carter's dealer, Irwin Volvo-GMC of Lima, Ohio, the same price assistance and price concession allowances that it was providing to Weber's White Volvo-GMC. It reiterates its contention that Volvo-GMC's dealings with a single dealer constitute an anticompetitive practice and that the offer the Postal Service received from Weber's White Volvo-GMC should be rejected as reflecting that practice.

The contracting officer's statement discloses the prices offered by the five offerors and notes that Weber's White Volvo-GMC's offer was not the lowest offer submitted. The contracting officer asserts that the arrangements between Volvo-GMC and its dealers are not anticompetitive practices within the purview of PM 1.8.1.

The protester submitted comments reasserting its claim that restraint of trade, elimination of competition, and collusion occurred in this procurement in violation of Postal Service regulations. Carter complains about award being made to Ford Motor Company while the solicitation was under protest^{2/} and states that it plans to pursue its anticompetitive complaint with the Federal Trade Commission.

Discussion

Carter, the third low offeror, has filed a protest challenging the proposal submitted by the second low offeror, Weber's-White Volvo-GMC. The protester's complaint is directed at the anticompetitive practices allegedly taking place between one offeror and the manufacturer of the cargo vans to be supplied. The protester has not challenged the proposal submitted by the offeror who received award, Ford Motor Company. As this solicitation provided that award would be made to the offeror whose proposal conformed to the solicitation requirements and provided the lowest total overall cost, even if the protester were to succeed in its challenge to the Weber's-White offer, it

^{1/}PM 1.8.1 states that "[a]nticompetitive practice is designed to eliminate competition or restrain trade." It further states that "[t]hese practices may violate Federal antitrust laws and be subject to prosecution by the Attorney General. Proposals suspected of reflecting anticompetitive practices may be rejected. . . ." PM 1.8.2 provides, in part, "[a]ny suspected anticompetitive practice must be reported promptly through normal management channels to the responsible APMG."

^{2/}Procurement Manual (PM) 4.5.5 proscribes contract award while a protest is pending. With appropriate higher level approval, however, award can be made prior to the resolution of the protest. The file indicates that the contracting officer, in this case, obtained the approvals required by this section, allowing him to properly make award while this protest was pending. We note, however, that although the protester was notified in accordance with PM 4.5.5, this office did not receive written notification of the award, at the time of or before award was made, as required by this section.

would not be eligible for award. "Where it does not appear that the protester, even if correct, would be eligible for award, resolution of its protest would be an academic exercise." Strapex Corporation, P.S. Protest No. 85-33, July 11, 1985. Similarly, it would be "an academic exercise" to reject for anti-competitive concerns a proposal which was not otherwise in line for award.

There remains the question whether Carter's concerns require any action under PM 1.8.2. Liberty Carton Company, P.S. Protest No. 85-35, July 30, 1985, presented a similar contention. There, the protester contended that it was an anticompetitive practice for a manufacturer of the material necessary to fabricate a flats tray to furnish the material to another carton fabricator while declining to deal with it. Citing previous decisions of this office and of the Comptroller General to the effect that the protester's anticompetitive concerns were outside our protest jurisdiction, we declined to deal with them. Similarly, we declined to require the reporting of an anticompetitive event:

As to Liberty's allegation that the contracting officer has not complied with the procedural requirements of [provisions antecedent to PM 1.8.1 and 1.8.2], the short answer is that the contracting officer did not suspect this procurement of involving a noncompetitive practice, and therefore saw no need to invoke those sections. The contracting officer has not abused his discretion in this regard, and therefore we will not overrule his determination. Cf. ARA Services, Inc., P.S. Protest No. 77-56, December 20, 1977.

Accord, Coplon Engineering & L. Parry, Inc., P.S. Protest Nos. 89-29, 89-32, 89-33, August 8, 1989. Those decisions require a similar result here. That does not, however, preclude the protester from seeking relief, in another forum, from any perceived anticompetitive practice directed against it. Coplon Engineering & L. Parry, Inc., supra.

The protest is dismissed.

William J. Jones
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[checked against original JLS 8/12/93]