

Body Armor Maker Didn't Have To Protest Bid, Judge Says

By **Natalie Olivo**

Law360, New York (October 14, 2016, 5:41 PM EDT) -- A body armor company did not violate an agreement with a competitor to jointly bid on a military contract with the U.S. government after failing to protest the winning bid, a Florida federal judge ruled in a decision released Thursday.

TYR Tactical LLC had accused Protective Products Enterprises LLC and Point Blank Enterprise Inc., together referred to as Point Blank, of breaching an agreement to bid together for a major defense contract for the design and manufacturer of tactical vests with body armor, which ultimately ended in an unsuccessful bid. According to TYR, which was the subcontractor, Section 5(d) of the parties' contract required Point Blank as the prime contractor to protest the winning bid, which Point Blank refused to do.

But in an order dated Oct. 11 and publicly filed Thursday, U.S. District Judge Beth Bloom found that the sole discretion on whether to protest the winning bid — which had gone to the U.S. Army's own design shop — belonged to Point Blank as the prime contractor. There was no obligation in the agreement that mandated Point Blank to file a protest simply if TYR wanted to, according to the order.

“Section 5(d) requires nothing more of the parties than for Point Blank to serve as a protesting party, and for TYR to support Point Blank as appropriate,” Judge Bloom said. “Section 5(d) does not express that Point Blank must file a bid protest, and the court will not now rewrite the provision to 'make it more reasonable' for TYR.”

The dispute stems from a joint-bidding contract, referred to as a teaming agreement, that TYR and Point Blank had entered into in September 2013. In addition to Section 5(d), the contract included an exclusivity provision that restricted the parties from offering a proposal to the government outside of their agreement.

According to the order, the U.S. government ultimately selected a competing design submitted by the Army's own entity, U.S. Army Natick Soldier RD&E Center. TYR believed that Point Blank should file a protest, but Point Blank refused, Judge Bloom said, noting that TYR eventually filed a protest itself, which the Army's relevant contracting office dismissed.

TYR then sued in August 2015, later filing an amended complaint claiming that Point Blank's “deleterious actions” caused the subcontractor to lose a lucrative, multimillion-dollar government contract.

Judge Bloom in December dismissed a fraudulent misrepresentation claim, and in her Oct. 11 decision

granted summary judgment to Point Blank on the two remaining claims. In addition to siding with Point Blank against TYR's claim that the prime contractor breached Section 5(d) of the agreement, she found that Point Blank did not breach the exclusivity provision of the contract.

TYR had contended that Point Blank "impermissibly teamed" with another subcontractor, MilTech, by supplying soft armor to MilTech, which was part of Army Natick's bid. While Point Blank filled orders to manufacture items for MilTech, some of which ended up going to Army Natick, MilTech never offered a proposal to the U.S. government, with or without Army Natick, according to the order.

In addition, Judge Bloom said, "the record is devoid of evidence indicating that Point Blank worked directly with Army Natick on its submission, much less that it offered a proposal jointly with Army Natick."

Judge Bloom also found the agreement barred TYR's claims for lost profit damages.

Jeffrey Kass, a Polsinelli PC attorney representing TYR, told Law360 on Friday that "we respectfully disagree with the court's decision and plan to appeal to the Eleventh Circuit."

Troy Brown, a Morgan Lewis & Bockius LLP attorney representing Point Blank, told Law360 on Friday that the company is "very pleased that the court, in an extensive, thoughtful and well-reasoned opinion, determined that Point Blank did not breach the terms of its teaming agreement with TYR Tactical, and has entered judgment in Point Blank's favor in this case."

Point Blank is represented by Troy Brown, Elisa P. McEnroe and Brian Michael Ercole of Morgan Lewis & Bockius LLP.

TYR is represented by Graham L.W. Day, Jeffrey H. Kass, Keith J. Grady and Todd A. Davidovits of Polsinelli PC and Brian Michael Torres.

The case is TYR Tactical LLC v. Protective Products Enterprises LLC et al., case number 0:15-cv-61741, in the U.S. District Court for the Southern District of Florida.

--Editing by Edrienne Su.