

**DECISION**

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

FILE: B-183193

DATE: June 16, 1975

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MATTER OF: Connelly Containers, Inc.

## DIGEST:

1. Negotiation procedures, unlike formal advertising procedures, are designed to be flexible and informal, thereby permitting consideration of an offer which departs from requirements of RFP if offer is most advantageous to Government, and all other offerors in competitive range are apprised of relaxation of requirements and afforded equal opportunity to submit new proposal on technical basis comparable to that of most advantageous proposal.
2. Allegation that negotiations were improperly conducted, in that written amendment to RFP detailing elimination of "post-consumer" waste requirement was not forthcoming, first raised after closing date for receipt of proposals, is untimely and not for consideration as issue of this nature must be raised before closing date for receipt of proposals pursuant to 4 C.F.R. § 20.2(a).

On October 17, 1974, request for proposals (RFP) No. CH-FD-75-031 was issued by the General Services Administration (GSA) for the supply of fiberboard boxes. Since an exigency need existed for the boxes, the procurement was negotiated in accordance with Federal Procurement Regulations (FPR) § 1-3.202 (amend. No. 32, March 1967). The RFP requested the submission of proposals prior to November 20, 1974.

Four offers were received in response to the RFP. The low offer was submitted by Tri-Wall Containers, Inc. (Tri-Wall), however, Tri-Wall predicated its offer upon supplying boxes containing no "post-consumer" waste materials. The RFP, on the other hand, required that the boxes in question have a minimum reclaimed fiber content of 25 percent, 5 percent of the total weight being "post-consumer" wastes.

All offers, as submitted, were evaluated by the contracting officer. After considering both the technical and pricing aspects of the offers, the contracting officer determined that three of the four offerors, including Tri-Wall, were within a competitive range for further negotiations.

During the conduct of negotiations the contracting officer decided to relax the technical requirement of the RFP pertaining to the recycled material content of the boxes to be furnished. Specifically, he decided to delete the requirement relating to "post-consumer" waste. The RFP originally required that 25 percent of the total weight of the boxes was to be recycled materials, consisting of the two kinds of recycled waste materials in the following proportions: a minimum of 5 percent was to be "post-consumer" waste, and the remainder, or approximately 20 percent, was to be "original producer" waste. Accordingly, in view of the relaxation, a supplier would still be obligated to furnish 20 percent "original producer" waste materials, but no "post-consumer" waste materials.

After this determination was reached, a Federal Supply Service (FSS) contracting official orally advised each of the three offerors in the competitive range that the requirement pertaining to "post-consumer" waste content had been deleted. Also, each offeror was advised that final offers were to be furnished prior to the close of business on December 30, 1974. Following the receipt of final offers, the contracting officer made an award to Tri-Wall on January 17, 1975.

Connelly Containers, Inc. (Connelly), has protested the making of the award to Tri-Wall. Connelly contends that GSA improperly included Tri-Wall as one of the offerors coming within the competitive range, since Tri-Wall had qualified its original proposal. Further, Connelly contends that proper procurement procedures were not followed by GSA during the course of negotiations.

GSA, in its report to our Office, has responded to Connelly's first contention by stating that FPR § 1-3.805-1(a)(5) (Circ. 1, 2d ed., June 1964) provides that:

"\* \* \* when the proposal most advantageous to the Government involves a material departure from the stated requirements, consideration shall be given

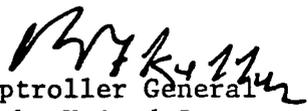
to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal \* \* \*."

GSA has taken the position that its contracting officer exercised proper administrative discretion when he decided to include Tri-Wall as one of the offerors falling within the competitive range.

Our Office has long recognized that negotiation procedures, unlike those required for formal advertising, are designed to be flexible and informal. These procedures properly permit the contracting officer to do things in the awarding of a negotiated contract that would be a radical violation of the law if the procurement were being accomplished by formal advertising. See 47 Comp. Gen. 279 (1967); Data General Corporation, B-182965, May 20, 1975. This is recognized by the FPR provision cited above which permits consideration of a proposal containing a material departure from the stated requirements as long as the other firms which submitted proposals are given an equal opportunity to submit new proposals on a technical basis comparable to that of the most advantageous proposal. As indicated above, all offerors were orally informed of the relaxation in the requirements. Accordingly, we find no legal basis to object to the inclusion of Tri-Wall in the competitive range.

Secondly, Connelly has contended that negotiations were improperly conducted, in that a written amendment to the RFP, detailing the elimination of the "post-consumer" waste requirement was not forthcoming, as required by FPR § 1-3.805-1(d). However, this contention was first raised well after the closing date for receipt of proposals. Under our Interim Bid Protest Procedures and Standards, 4 C.F.R. § 20.2(a) (1974), protests based upon alleged improprieties in any type of solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date for receipt of proposals. In view of this, we must decline to consider this contention.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States