

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548609 ~~27~~
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FILE: B-183780

DATE: June 14, 1976

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MATTER OF: Aerosonic Corporation

DIGEST:

Protester's allegation of biased evaluation is not supported where agency made mistake in computing offeror's prices since mistake appears to have been inadvertent. However, deficiencies in solicitation are being brought to attention of Secretary of Air Force to prevent their recurrence.

Aerosonic Corporation has protested the award of a contract to Bendix Corporation under RFP F33657-75-R-0490, issued by the United States Air Force Systems Command. Basically, Aerosonic states that it submitted an offer which was approximately \$50,000 lower than the Bendix offer and should have been awarded the contract, but that it was discriminated against by the Air Force. As a consequence, Aerosonic contends that the Government should either pay Aerosonic the profit it would have made on the contract or award Aerosonic the option quantities included in the contract awarded to Bendix.

The solicitation requested offers for the supply of airspeed indicators. The proposal evaluation criteria were stated to be: schedule, price, performance, quality assurance, and qualification to produce the items. After evaluating best and final offers and the information obtained by pre-award survey teams, the contracting officer decided to award the contract to Bendix for \$552,812,98 because it " * * * offers the lowest total price, will comply with the requirements of the Request for Proposal and is rated highest in accordance with the Source Selection Criteria. "

However, upon reviewing Aerosonic's protest the Air Force concluded that it had made a mistake in computing the prices, and that Aerosonic had submitted the lowest priced proposal. However, the Air Force maintains that, under the evaluation factors contained in the solicitation, the award to Bendix nevertheless, was proper. In support of its position the Air Force points out that it rated Bendix superior to Aerosonic in schedule risk, previous performance record, and design risk, and that " * * * the cost advantage of Aerosonic would not have outweighed the technical superiority of Bendix. Bendix still would have received the award. "

In response to the Air Force position, Aerosonic states that for the past 11 years it has been supplying the Air Force with similar indicators, and it questions how the Air Force could determine that Aerosonic was not as qualified as Bendix, which has never produced the item. Aerosonic concludes that it was intentionally not given the award because of Air Force bias against Aerosonic.

We are not in a position to determine which offeror should have received the award if the correct prices are considered. As we have previously held, it is not our function to evaluate proposals in order to determine which should have been selected for award. TGI Construction Corporation, et al., 54 Comp. Gen. 775 (1975), 75-1 CPD 167; Techplan Corporation, B-180795, September 16, 1974, 74-2 CPD 169; Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175. Further, we have held that where, as here, a contract is to be awarded on a fixed price basis, an inferior offer may be rejected notwithstanding the rejected offeror's proposed lower costs. See Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

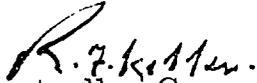
Therefore, it may be, as Air Force states, that Bendix would have received the award notwithstanding Aerosonic's lower price. In any event, we cannot conclude from the evidence of record that the Air Force's mistake was not inadvertent or that there was bias in favor of Bendix. We note that the offerors were required to submit prices for eight categories of performance and the Air Force reserved the right to make an award based on the combination of the eight categories most favorable to the Government. Apparently several of the categories contained overlapping testing provisions which the Air Force did not properly take into account in calculating the protester's prices.

The Air Force points out, however, that it has reevaluated the procedure employed in this procurement with its heavy reliance on data gathered during the pre-award surveys and proposes to discourage the use of similar procedures in the future. It states that in light of this determination and the mistake in the price computation, the procuring activity has been directed not to exercise the options in the contract awarded to Bendix. Moreover, the Air Force adds that it considered terminating the Bendix contract and resoliciting the entire procurement, but by the time it submitted its administrative report on this protest the time needed for a resolicitation appeared

prohibitive and the cost of terminating the Bendix contract for the convenience of the Government was estimated to be approximately equal to the face value of the contract. We have no reason to disagree with the Air Force.

In addition to the deficiencies acknowledged by the Air Force, we note that the solicitation failed to advise the offerors of the relative importance of the evaluation factors, including the relative values of technical excellence and price. It is our position that intelligent competition requires, as a matter of sound procurement policy, that offerors be so advised. See Signation, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386. Accordingly we are advising the Secretary of the Air Force of our position in this matter so as to avoid a recurrence.

With regard to Aerosonic's request for recovery of anticipated profits the Court of Claims has stated that there is no basis for recovery thereof by a claimant who is not a party to a Government contract. See Heyer Products Company, Inc. v. United States, 135 Ct. Cl. 63 (1956), and Keco Industries, Inc. v. United States, 428 F 2d. 1233 (Ct. Cl. 1970); see also Edward E. Davis Contracting, Incorporated, B-179719, B-179720, January 29, 1974, 74-1 CPD 37. Also, this Office is not in a position to recommend that the option quantities be awarded to Aerosonic without obtaining competition.


Acting Comptroller General
of the United States