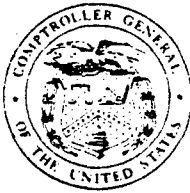


DECISION



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

60818

FILE: B-184375

DATE: April 29, 1976

99004

MATTER OF: Raytheon Company - Reconsideration

DIGEST:

1. Exceptions taken in proposal to various solicitation provisions in anticipation that agency will discuss exceptions during negotiation do not constitute a protest within meaning of GAO Bid Protest Procedures.
2. Although GAO will consider untimely protests if they raise issues significant to procurement practices or procedures, protest against solicitation provisions essentially concerns whether Government's minimum needs were properly determined and does not involve significant issue under GAO Bid Protest Procedures.
3. Although in negotiation matters of "nonresponsiveness" are considered subjects for discussion, fact that proposal contains deviations from solicitation requirements does not preclude an agency from dispensing with discussions when it can justify doing so under applicable statute and regulations permitting award without discussions.

Raytheon Company has requested reconsideration of our decision B-184375, January 28, 1976, 76-1 CPD 55, in which we held that Raytheon, having deviated from or otherwise taken exception to various solicitation requirements in a case where the Veterans Administration (VA) awarded a negotiated contract without holding discussions, had not timely protested against the solicitation provisions because the protest was filed after the date for receipt of initial proposals. Moreover, we held that the decision to award without discussions under the circumstances of this case was a proper exercise of the contracting officer's discretion.

In its request for reconsideration Raytheon first contends that the exceptions taken to the solicitation provisions in its proposal "constituted a form of protest" and should have been considered as such under our Bid Protest Procedures. We do not agree. The Raytheon proposal merely offered terms and conditions at variance with those required in the solicitation in anticipation of an opportunity to negotiate over those provisions. Although a request for review of a procurement need

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not contain exact words of protest to be characterized as a formal bid protest, Johnson Associates, Inc., 53 Comp. Gen. 518 (1974), 74-1 CPD 43, it must contain enough so that what is submitted "should reasonably be understood" as the lodging of specific objections to what is proposed. EDCOM, Inc., B-185345, March 25, 1976, 76-1 CPD 196. Here Raytheon itself characterizes its deviations merely as /s/uggested clarifications and revisions" and "suggested * * * revisions in the contract terms." We confirm our position that Raytheon's non-conforming offer did not constitute a protest within the meaning of our Bid Protest Procedures. See, e.g., Square Deal Trucking Company, Inc., B-182436, February 19, 1975, 75-1 CPD 103.

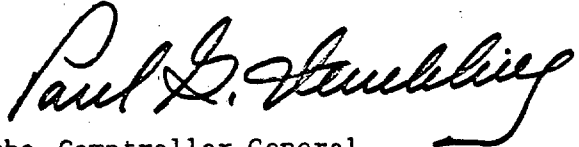
Raytheon further contends that, even if untimely, its protest raises issues significant to procurement practices and should be noted on "for the benefit of all involved in /the/ field of procurement." We have held that an issue is significant to procurement practices if it involves "a principle of widespread interest." 52 Comp. Gen. 20 (1972). The provisions to which Raytheon objects concern contractor approval for removal of equipment from one governmental site to another, 2 hour response time for on-call maintenance, a requirement that there be no charge for replacement parts, preventative maintenance, etc, and a liquidated damages provision. Questions regarding these provisions essentially go to "whether the minimum needs of the Government were properly determined and reflected" in the solicitation and do not rise to the level of a significant issue. Leasco Information Products, Inc. et. al., 53 Comp. Gen. 932, 948 (1974), 74-1 CPD 314; Reconsideration of National Biomedical Research Foundation protest, B-182270, December 6, 1974, 74-2 CPD 317.

Raytheon next contends that the failure of the VA to negotiate with it was contrary to our holding in DPF Incorporated, B-180292, June 5, 1974, 74-1 CPD 303, in which we said that the "rigid rules of bid responsiveness in formally advertised procurements do not apply to negotiated procurements" and that "in such procurements, 'nonresponsiveness' is ordinarily considered to be a subject of negotiation." In DPF the agency rejected one proposal as nonresponsive and then conducted discussions with the remaining offeror. In this case, however, discussions were not held at all, the VA determining that time of delivery did not permit discussions to be held. Thus, the two cases are materially different since the fact that some aspects of a proposal may be a proper subject for negotiation does not mean that an agency cannot dispense with discussions when it can justify doing so under the statutory and regulatory provisions which permit award without discussions.

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Raytheon also points out, for the first time, that VA may have conducted negotiations with GTE Sylvania in that "some features * * * of the [awardee's] system were deleted in the award process." Raytheon then states that if this is the case, then discussions should also have been held with Raytheon and requests that we "explore this point" with VA. This allegation, which appears to be at least partially based on conjecture, is clearly untimely and since it was first raised well after the contract delivery date, there would be no point in our considering it.

Other issues raised by Raytheon have been resolved informally and will not be discussed herein. Accordingly, our prior decision is affirmed.

A handwritten signature in cursive script, reading "Paul G. Stumbling". The signature is written in dark ink and is positioned above the typed name and title.

For the Comptroller General
of the United States