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J. Vickers
Proc I

DECISION



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

FILE: B-187339

DATE: January 3, 1977

MATTER OF: General Instrument Corporation

DIGEST:

1. Allegation that offerors made price reductions of 50 and 25 percent, respectively, in best and final offers which were unsupported by cost breakdown and other documentation is found to be without basis as review of proposals shows that adequate supporting documentation for price reduction accompanied best and final offers.
2. Protest that offeror was attempting to "buy in" is without merit as contracting officer has determined that significant charges are not expected during performance of contract, follow-on procurements will be competitive in nature and proposed awardee price was found to be cost realistic.

On March 17, 1976, the United States Army Electronics Command issued request for quotations (RFQ) No. DAAB07-76-Q-1950 for 12 engineering development models of a processor and control unit for Radar Warning System AN/APR-39(V-2).

Four responses were received by the closing date and, following an initial evaluation, all were found technically acceptable. Technical and cost discussions were held with all offerors and after best and final offers were evaluated, the contracting officer had made the selection of the proposed awardee but prior to award being made, General Instrument Corporation (GIC) protested to our Office and award is being withheld pending our decision.

GIC's protest is based on the allegations that two offerors, who made 50-percent and 25-percent cost reductions, respectively, in their best and final offers, failed to furnish supporting documentation justifying the reductions and that such reductions were an attempted "buy-in." Further, GIC contends that it was the lowest responsive offeror, price and other factors considered.

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The request for best and final offers dated July 27, 1976, contained the following advice to offerors:

"* * * Major revisions are not expected, but should you revise your offer in any way, complete and detailed support for the revision and any other affected part of your proposal must accompany the revision. In the event the price is revised, a complete cost breakdown setting forth the revisions and basis therefor shall be submitted with the revised offer. The government reserves the right to reject any proposal if data specified above is not submitted with a revision or, if submitted, is inadequate to establish the acceptability of the revised offer."

GIC argues that the two offerors failed to comply with the above requirement.

The contracting officer has advised our Office that both offerors who reduced their proposal cost substantially in the best and final offers submitted the data required in the request for best and final offers to support such reductions. The offeror who proposed the 50-percent reduction, however, became the least desirable of the four offerors following the final technical evaluation and is not under consideration for award.

Regarding the offeror who reduced his proposed cost by 25 percent, we have reviewed the best and final offer and concur with the contracting officer's determination that sufficient data was supplied to support the cost reduction, including a cost breakdown relating to labor and materials. Also, the proposals were subjected to a final technical analysis and costs were reviewed to determine if they had been realistically stated, which they were found to have been. Therefore, the protest based on this contention is denied.

GIC further argues that because of the large price reductions in the best and final offers, it appears that these reductions were an attempt to "buy-in" on the program.

In EPSCO, Incorporated, B-183816, November 21, 1975, 75-CPD 338, we discussed the principles applicable to allegations of "buying-in" as follows:

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"ASPR 1-311 addresses the situation where an offerer knowingly offers a price substantially below anticipated cost with the expectation of recovering the loss by an increase in price through change orders during performance or by receiving follow-on contracts at prices high enough to recover the loss on the original 'buy in.' The act of wilfully bidding below cost is not expressly prohibited. However, when there is reason to believe that this has occurred, the contracting officer is required by that regulation to assure that the difference is not recovered in the pricing of change orders or of follow-on procurements subject to cost analyses. Further, since the regulation does not provide for rejection of a bid where a 'buy in' is suspected, we have recognized that there is no legal basis upon which an award may be precluded or disturbed merely because the low bidder submitted an unprofitable price. * * *"

In the instant case, the contracting officer has advised that the possibility of a "buy-in" in this program is remote as significant or numerous changes are not contemplated during the performance of the contract and follow-on procurements will be competitive in nature. Therefore, we feel that the contracting officer has taken all necessary steps to preclude a "buy-in."

Finally, GIC's allegation that it was the lowest responsive offeror, price and other factors considered, appears to not be factually correct as GIC's best and final offer was not the lowest priced proposal. Moreover, the RFQ stated that award would be based on the following factors, in the order listed: technical, price and management. Therefore, price was not of prime consideration in determining the successful proposal.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States