

12181 Boyle Proc.

DECISION



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

FILE: B-194322

DATE: December 3, 1979

MATTER OF: Informatics, Inc.--Reconsideration 0803

[Request for Reconsideration of Department of Commerce Decision]

DIGEST:

Prior decision is affirmed because protester has not shown any errors of fact or law in conclusions that agency had reasonable basis for negotiating and solicitation reasonably notified potential offerors that award would be based on low-priced, technically acceptable offer.

R (Informatics, Inc., requests <sup>ed</sup> reconsideration of a decision Informatics, Inc., B-194322, August 28, 1979, 58 Comp. Gen. \_\_\_, 79-2 CPD 159, (on the grounds that the decision is wrong in sustaining the determination of the Department of Commerce to negotiate the contract for certain data processing services and in holding that the request for proposals (RFP) contained adequate evaluation criteria.) 74

The August 28 decision is affirmed for the reasons indicated below.

(Informatics states that negotiation is not necessary because Commerce drafted specifications for the same services in the past and it is not impossible to draft adequate specifications.) Informatics contends that the purpose of the negotiation is to delve into the responsibility of prospective offerors and that the negotiation process is being used only to obtain with the offers the "technical proposal" that was requested after the opening of bids when the procurement was advertised. Informatics states that changing the time for the submission of the "technical proposal" does not affect the adequacy of the specifications.

(This <sup>argument</sup> was thoroughly considered in the August 28 decision. It was rejected because Commerce showed that all output situations could not be specified and each offeror's "technical proposal" had to be reviewed to <sup>in the decision</sup>

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ascertain whether it possessed the technical flexibility to handle inevitable changes. The timing of the technical submission was not the convincing point; it was the showing that all output situations were not then capable of being specified. Thus, there was a reasonable basis for Commerce's determination that it was impossible to draft adequate specifications for formal advertising.

We have stated in the preceding paragraph Commerce's reason for requiring technical proposals. The information being obtained is not to test the responsibility of the offeror, but to ascertain that the agency's needs are being obtained. Therefore, the decisions in 52 Comp. Gen. 854 (1973) and Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410, cited by Informatics, dealing with responsibility are not germane.

In the August 28 decision, we concluded that the RFP reasonably notified offerors that award would be made to the responsible offeror who submitted the lowest-priced, technically acceptable offer. Informatics disagrees with that conclusion because it believes that some statements in Commerce's report on the protest indicated it was looking for more than minimum technical acceptability and for some "ultimate" value instead of the lowest fixed price.

However, the basis for evaluation and award is controlled by the terms of the RFP. To support our conclusion (that award was to be made to the responsible offeror who submitted the lowest-priced, technically acceptable offer) we pointed out that the RFP stated that award would be made to the responsible offeror whose offer conformed to the solicitation and was most advantageous, price and other factors considered, and "price and other factors" was explicitly defined, indicating the importance of price. Informatics' citation of Commerce's report on the protest to prove otherwise is not persuasive because, when read in context, Commerce was merely pointing out the advantages of negotiation.

TM Systems, Inc., B-187367, January 26, 1977, 77-1 CPD 61, and Wismer and Becker Contracting Engineers and Synthetic Fuel Corp. of America, A Joint Venture, B-191756, March 6, 1979, 79-1 CPD 148, were cited in our prior decision to indicate that, in negotiated procurements, the meaning generally accorded to the terms "advantageous offer, price and other factors considered" is technical acceptability.

However, because the RFP expressly stated that these terms related to price, we interpreted cost to be the controlling factor once the proposals were determined to be technically acceptable. On the latter point, it should be noted that the "Contract Award" section quoted in the prior decision provided for award being made to the proposal "conforming to the Solicitation."

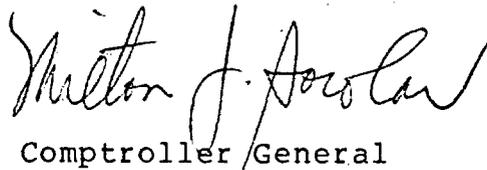
Finally, Informatics states that the August 28 decision fails to require Commerce to give offerors guidance on what constitutes "technical acceptability" as required by procurement regulations and our decision at 49 Comp. Gen. 229 (1969).

We believe that Informatics' reliance on 49 Comp. Gen. 229 is misplaced. That decision involved the Air Force's rejection of a proposal after application of detailed and rigid requirements even though the solicitation stated the Government's technical requirements in broad, general terms. We held that notice should be given of any minimum standard which will be required as to any particular element of evaluation.

In the instant situation, numerous technical requirements were outlined in the solicitation and the RFP stated that one element for award consideration was the requirement that the offer conform to the solicitation. We have no basis to conclude that Commerce failed to disclose other minimum standards of technical acceptability.

Finally, by letter dated November 8, 1979, Informatics requests that we reevaluate the timeliness aspect of the August 28 decision. We believe that it is unnecessary for us to reconsider that aspect of our decision now since we resolved the issue in Informatics' favor and considered the merits of the protest and have reconsidered the merits of the protest here.

Accordingly, we do not find any errors of fact or law in the prior decision.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General  
of the United States