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DECISION



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

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[Protest of Proposals Rejection as Unacceptable]

FILE: B-196443

DATE: April 3, 1980

MATTER OF: Maryland Machine Tool Sales

DLG-00889 MMTS

AGC00001

DLG-03737

DIGEST:

1. Agency is not required to negotiate with offeror whose proposal is outside the competitive range.
2. Protest that awardee's equipment is not standard production model as required by specifications is matter of contract administration which is the responsibility of procuring activity, not GAO.

Maryland Machine Tool Sales (MMTS) protests the award of seven contracts for machine tools to Canadian Commercial Corporation (CCC) by the Department of the Navy under requests for proposals N00600-79-R-2373, B117, B722, A333, 4717, A714 and A707. MMTS' proposals were rejected by the Navy after they were judged to be unacceptable as submitted.

The Navy reports that it received offers for each solicitation from MMTS and CCC. MMTS' proposals for seven solicitations were determined to be so deviant from the specifications that they could not be made acceptable through negotiations. After determining that CCC's proposals were technically acceptable and reasonably priced, the Navy awarded CCC the seven contracts.

MMTS contends that negotiations should have been held with it because its prices were the lowest and its proposal deficiencies could have been resolved through negotiations. It adds that the Department of Defense emphasizes that negotiations should be held with offerors.

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MMTS misunderstands the applicable regulations. Written or oral discussions must be conducted with only those responsible offerors who submit proposals within a competitive range. Defense Acquisition Regulation § 3-805.1 (1976 ed.). The contracting officer determines which proposals are in a competitive range on the basis of price or cost, technical and other salient factors. The competitive range must include all proposals that have a reasonable chance of being selected for award. DAR § 3-805.2. The determination of whether a proposal is in the competitive range, especially with respect to technical considerations, is a matter of administrative discretion which will not be disturbed unless there is a clear showing of abuse of discretion. Joule Maintenance Corporation, B-194100, November 9, 1979, 79-2 CPD 347. When an offeror submits an unacceptable technical proposal, such offeror may be excluded from the competitive range without regard to its proposed costs. Energy Research Corporation, B-185018, July 13, 1976, 76-2 CPD 37.

MMTS' proposals were rejected because the equipment offered did not meet the specifications. When the Navy initially informed MMTS that its offers were unacceptable, it relayed in great detail why the proposals were rejected. In addition, the major proposal defects were discussed at a meeting held after award between MMTS and the Navy. At that time, the Navy conceded that several of the deficiencies for which MMTS was rejected could have been overcome with little difficulty. These included the furnishing of T-slots and collet chucks. Other deficiencies, however, still existed and justified rejection of the offers. For example, the Navy found that MMTS' equipment would provide a maximum of 180 degree swivel without unacceptable removal and repositioning while the Navy required 360 degree swivel without removal and repositioning. In addition, the machine's two-speed motor is unacceptable, and also does not meet the torque requirement.

MMTS argues that "the two-speed motors offered by MMTS exceeds the amount of torque required to satisfy

the performance test," that the swivel requirement "can be met with no difficulty," and that its equipment can satisfy the other RFP requirements discussed at its meeting with the Navy as well. The protester did not address any of the other points made by the Navy in its detailed rejection letters.

MMTS appears to be arguing that its equipment can satisfy the Navy's performance requirements. The protester does not deny, however, that its machines do not conform to the specifications. With regard to the above examples, MMTS has not shown that its machines can meet the 360 degree swivel requirement in the manner specified by the Navy, that is, without removal and repositioning. Even if the machines can meet the torque requirement, the protester's use of a two-speed motor is unsatisfactory to the Navy for other reasons. MMTS has offered no evidence that its equipment can perform in compliance with the Navy's requirements or in the alternative, that the specifications are unreasonable. In this connection, if the protester wished to object to the specifications on the basis that its equipment, without meeting the specifications, could perform to meet the Navy's needs, it should have protested prior to closing date for receipt of proposals. See 4 C.F.R. § 20.2(b)(1) (1979).

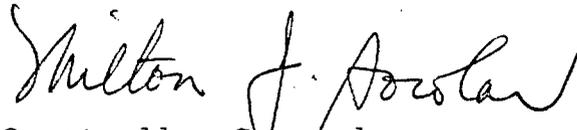
The record indicates that the Navy made a thorough evaluation of MMTS' proposals and found that the equipment offered deviated from many of the Navy's minimum requirements. MMTS' unsubstantiated conclusions do not convince us that its equipment meets the RFP requirements. Consequently, notwithstanding MMTS' low price proposal, we find that the Navy did not abuse its discretion by excluding MMTS from the competitive range. There is no obligation to hold discussions with an offeror to permit the offeror to improve its proposal when the proposal is so deficient as to be outside the competitive range.

MMTS also alleges that CCC's equipment is not the standard production model required by the specifications.

The Navy states that all proposals were evaluated "in strict conformance with the specifications," and that CCC's proposals were acceptable. Whether CCC's equipment actually complies with the contract specifications is a matter of contract administration which is the responsibility of the procuring activity, and is not for consideration by GAO under its Bid Protest Procedures. Harris Corporation, B-192632, April 5, 1979, 79-1 CPD 235.

Finally, MMTS states that CCC is a Canadian Government corporation and is given "special privileges," which is an "injustice to the unwary small business trying to compete for contracts." MMTS offers no evidence of any improper "special privileges" accorded CCC.

The protest is denied.



For The Comptroller General
of the United States