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DECISION



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

FILE: B-208581.2

DATE: March 1, 1983

MATTER OF: Jana, Inc.

DIGEST:

Agency properly allowed offerors to submit revised proposals based on an amendment to the RFP, even though the amendment may have had no significant impact on price since amendment was necessary to clear up inconsistency in RFP and once the amendment was issued agency had to provide opportunity for submission of revised proposals.

Jana, Inc. protests the award of a contract to any other firm under request for proposals (RFP) No. F34601-83-42902, issued by the Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, for technical order up-dating. Jana protests on two grounds: (1) the Air Force improperly extended the closing date for receipt of offers after the initial closing date had passed and initial offers had been evaluated; and (2) this requirement should have been solicited on a formally advertised, rather than a negotiated, basis. For the reasons discussed below, we deny the protest.

The RFP, issued May 25, 1982 as a total small business set-aside, provided that award would be made to the firm offering the lowest total price for basic and option quantities. Amendment 0005 set July 15 as the closing date for receipt of initial offers. Five offers were received. Prior to making award to the low offeror on the basis of initial proposals, the Air Force determined that since the solicitation provided for inspection and acceptance at destination, standard clause MIL-I-45208A, Inspection System (Defense Acquisition Regulation (DAR) § 7-104.33), which provided for inspection at the source, should not have been included in the RFP. Thus, on August 4, the agency issued Amendment 0006 deleting this clause, and allowing the five offerors to submit revised proposals.

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Jana contends that it was improper for the Air Force to permit the offerors to modify their proposals in response to Amendment 0006. Jana maintains that deletion of the inspection clause was insignificant and could not reasonably be expected to have an impact on the offerors' prices. Jana speculates that the contracting officer's real reason for extending the closing date was to show his displeasure with the prices received and to indicate that he wanted to "auction" the contract.

The regulations provide that in a negotiated procurement, when either before or after receipt of proposals, changes occur in the Government's requirements or the agency decides to relax, increase or otherwise modify the scope of the work or its statement of requirements, such change shall be made in writing as an amendment to the solicitation. DAR § 3-805.4. While it appears that the Air Force initially contemplated making award on the basis of initial proposals, it was not required to do so. See Delta Electronic Construction Co., B-205069, November 4, 1981, 81-2 CPD 388. In light of the inconsistent provisions in the solicitation relating to inspection, it was appropriate for the agency to amend the solicitation to remove the inconsistency. See Computek Incorporated; Ontel Corporation, 54 Comp. Gen. 1080 (1975), 75-1 CPD 384. Further, once the amendment was issued the Air Force was required to permit the submission of revised offers. Davey Compressor Company, B-203781.2, May 10, 1982, 82-1 CPD 444. Even if the amendment did not have a significant impact on price, offerors were free to modify their price proposals in any way they saw fit. University of New Orleans, 56 Comp. Gen. 958 (1977), 77-2 CPD 201. Thus, we have no basis to object to the Air Force's actions here.

Moreover, there is no indication that Jana was affected by the Air Force's decision to solicit revised proposals. The record shows that another offeror was in line for award as the low offeror based on the initial proposals. We note that one of the other three offerors, AAA Engineering and Drafting, Inc., did revise its proposal and now is in line for the award.

With respect to Jana's allegation that this procurement should have been advertised rather than negotiated, we point out that under our Bid Protest Procedures, protests concerning defects apparent on the face of the solicitation should be filed in our Office prior to the closing date for submission of initial offers. See 4 C.F.R. § 21.2(b)(1). The procurement method chosen to satisfy a particular requirement constitutes an alleged defect apparent from the face of the solicitation, and thus Jana should have protested prior to the initial closing date. See International Business Investments, Inc., B-204429, January 6, 1982, 82-1 CPD 16. We note that Jana's interest in this issue seems limited to the question of whether Jana was prejudiced by the use of negotiation, that is, whether Jana would have been entitled to award as the low offeror under the initial proposals. As indicated above, Jana was not the low offeror under either initial or revised proposals. Therefore, it does not appear that it was prejudiced by the use of negotiation procedures here.

The protest is denied.

for Milton J. Fowler
Comptroller General
of the United States