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**DECISION**



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

**FILE:** B-211452

**DATE:** September 23, 1983

**MATTER OF:** MacGregor Athletic Products

**DIGEST:**

1. Initial proposal is properly excluded from competitive range where information necessary to evaluate proposal was omitted.
2. Rejection of late modification of proposal is proper since the GSA's current procurement policy requires that standard late proposal rules be applied to multiple-award schedule procurements.
3. To be considered timely, a protest based on alleged improprieties in RFP which are apparent prior to closing date must be filed before that date.

MacGregor Athletic Products (MacGregor) protests the General Services Administration's (GSA) refusal to accept its proposal submitted in response to request for proposals (RFP) No. 10PN-HRS-0215. The RFP, a multiple-award schedule (MAS) solicitation for outdoor athletic and recreational equipment, was issued on December 17, 1982, and closed on January 31, 1983.

The protest is denied in part and dismissed in part.

MacGregor submitted its proposal package to GSA on January 24, 1983. The package, opened by GSA on February 1, contained two copies of MacGregor's published catalog and retail price list, a separate discount price list with coversheet relating to a limited group of equipment, and a cover letter that referred to an enclosed offer, although no additional material was included in the package.

On February 11, 1983, after MacGregor discovered that the package did not contain all the material it

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intended to include, it submitted a completed standard form (SF) 33, Solicitation, Offer and Award with attachments, including the Discount Schedules and Marketing Data Sheet required by the RFP. On March 28, 1983, GSA advised MacGregor that it could not accept its January 24 letter and price lists as an offer since they were so lacking in details that they were incapable of being evaluated. GSA refused to accept the proposal details submitted by MacGregor on February 11 because it believed that doing so would have constituted accepting a late offer contrary to the provisions of the solicitation, which prohibited acceptance of late proposals or late modifications of proposals except under circumstances not present here.

The record indicates that the information initially submitted by MacGregor did not identify the items on which it intended to contract, the scheduled delivery times for those items (as required by clause 998 of the solicitation), or the prices and discounts to be offered for each item. MacGregor also failed to provide information concerning its discount program with its commercial customers and dealers, although specifically requested to do so on attachment 1, Discount Schedules and Marketing Data Sheet. GSA argues that it is essential for a firm to provide this information as a basis for negotiation since the Government's objective under the multiple-award system of contracting is to obtain from a firm a discount equal to or greater than the discount given to the firm's most favored customers.

MacGregor argues that the material included in the initial submission provided substantial information which should have been sufficient to be considered an offer and to form the basis for negotiations. MacGregor points out that its initial submission discussed such matters as minimum order amount, delivery zones and delivery charges. The catalogs described the equipment and gave list prices for each item. A separate price list provided the Government's discounted prices for items procured under MacGregor's "Bulk-Deflate Program," a sales program in which MacGregor sold bulk quantities of deflated sports balls (some of the items covered by the RFP) at a price substantially lower than that charged for smaller quantities of inflated products.

The evaluation of proposals and the determination of firms that will be included in negotiations are matters within the discretion of the procuring agency since it is responsible for identifying agency needs and the best method of accommodating them. Ecological Consulting, Inc., B-208539, February 14, 1983, 83-1 CPD 151. We will not question an agency's evaluation of a proposal absent a showing that the agency's determination was unreasonable, arbitrary, or in violation of procurement laws or regulations. Digital Equipment Corporation, B-207312, August 9, 1982, 82-2 CPD 113.

Considering the limited amount of material submitted by MacGregor and considering that our Office has recognized that a proposal properly may be excluded from the competitive range for deficiencies which are so material that major additions and revisions would be required to make it acceptable (Decilog, B-198614, September 3, 1980, 80-2 CPD 169), we believe the agency acted reasonably in rejecting MacGregor's initial proposal and thereby excluding it from the competitive range.

MacGregor next argues that, if its initial submission was deficient, it should have been allowed to correct those deficiencies since GSA procurement regulations specifically allow contractors to correct deficiencies in their proposals. MacGregor contends that it was improperly denied the opportunity to correct and clarify its proposal.

MacGregor relies on the following portion of a GSA policy statement concerning MAS awards:

"I. A. \* \* \* Each MAS solicitation will include Discount Schedule and Marketing Data Sheets to be completed for each Special Item Number (SIN) and submitted as a part of the offeror's proposal \* \* \*

"B. Initial Review of Offerors Proposal. As soon as possible after receipt of proposals, the contracting officer should review in detail the offeror's submission in response to the Discount Schedule and Market Data Sheets. If the offer has failed to respond to specific data elements

or if the response is not adequate, the contracting officer should immediately request that the offeror correct any deficiencies in the data submission. \* \* \*" 47 Fed. Reg. 50, 246 (1982).

We agree with the agency that the above-quoted statement presupposes the allowance of deficiency correction only where the offeror has first submitted sufficient information required by the solicitation, including the Discount Schedule and Marketing Data Sheets. In essence, the agency argues that normal negotiation procedures apply here. That argument is supported by the plain language of the policy statement, that is, "None of these policies contravene existing Federal Procurement Regulations." As mentioned above, MacGregor failed to provide this information in its initial proposal; therefore, the contracting officer acted properly in refusing to allow correction of MacGregor's proposal deficiencies.

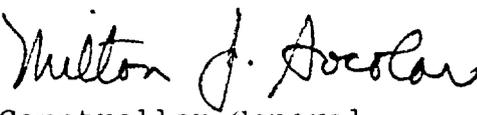
MacGregor also argues that the unique nature of the MAS procurement process should allow GSA to accept its post-closing-date February 11 submission and to enter into negotiations with MacGregor. MacGregor argues that since correction of its proposal would not be detrimental or prejudicial to the positions of other offerors, it would be in the Government's best interest to consider as many suppliers for award as possible.

While GSA may have been allowed to accept late proposals or late modifications to proposals for MAS solicitations in the past, GSA's current policy imposes the standard late proposal rules on MAS contracts. See The 3M Company, B-206317, February 22, 1982, 82-1 CPD 158. Since the standard late proposal rules included in the solicitation allow acceptance of late proposals or late modifications to proposals only under certain exceptions not applicable here, the contracting officer properly refused to accept the February 11 submission.

MacGregor finally argues that the solicitation did not identify factors or the relative importance of such factors for the purpose of establishing a competitive range.

Our Bid Protest Procedures require that a protest based on alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals be filed before that date. 4 C.F.R. § 21.2(b)(1) (1983). In this case, the closing date for receipt of proposals was January 31, 1983, but the protest was not filed until April 8, 1983. Since the alleged inadequacy in the RFP clearly was evident when MacGregor received the solicitation, we will not consider the merits of this argument.

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States