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DECISION



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

FILE: B-212227

DATE: November 18, 1983

MATTER OF: Chemex Alaska

DIGEST:

Award on the basis of initial proposals is proper where the selected proposal does not vary substantially from the solicitation's requirements, and acceptance of it without discussion will result in a fair and reasonable price.

Chemex Alaska protests the award of a contract for two mobile washer systems to Bear Pump Company under request for proposals (RFP) No. DTFR54-83-R-00019 issued by The Alaska Railroad, Department of Transportation (Railroad). Chemex alleges that Bear Pump's proposal did not conform to the RFP. We deny the protest.

At the outset, we note that the Railroad has requested this Office to dismiss Chemex's protest as untimely because we did not receive it until June 28, more than 10 working days after the June 3, 1983 award to Bear Pump, when Chemex's basis for protest arose. Under our Bid Protest Procedures, however, protests must be filed with either the contracting agency or this Office not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1983). Here, Chemex timely protested the June 3 award by letter to the Railroad dated June 14. Chemex's subsequent protest to this Office, filed before the Railroad resolved Chemex's initial protest, did not have to satisfy the same 10-day filing requirement, and therefore will be considered on the merits.

The Railroad issued the RFP to obtain both a locomotive washer (AR-01) and a passenger car washer (AR-02). Five proposals were received, which were evaluated without discussions or negotiations with any offeror. As a result, the Railroad awarded a contract to Bear Pump on the basis of its initial proposal. Chemex now protests that Bear Pump's proposal was nonconforming because its offered washer systems did not meet certain specified requirements of the solicitation. Chemex principally objects that Bear Pump's proposal showed that its two systems had much higher spray

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nozzle pressures than the 1500 pounds per square inch (psi) specified in the RFP as the maximum allowable pressure for each washer. The specification in issue required "up to 1500 psi at 0° to 65° spray pattern at spray nozzle." Bear Pump's proposal for the locomotive washer indicated a 7.7 gallons per minute flow rate at 6,000 psi; for the passenger washer, the proposal indicated a flow rate of 6 gallons at 3,500 psi. The proposal also indicated that both nozzles were adjustable to higher and lower pressures. Chemex also complains that Bear Pump's cleaning solutions are not chemically neutral.

The Railroad has responded by stating that although Bear Pump's proposal showed higher spray nozzle pressures than prescribed in the RFP, the agency's evaluators knew as the result of a prior demonstration that both Bear Pump systems were adjustable so that spray nozzle pressures could be kept at or below 1500 psi. In addition, the Railroad points out that it did not solicit chemicals as part of an offer, but rather only provided that if a chemical-type system is proposed, the chemicals must be neutral according to federal and Alaska standards. The Railroad states that it buys chemicals separately, and that both Bear Pump systems are compatible with the chemicals the Railroad purchases.

Federal Procurement Regulations § 1-3.805-1(a)(5) (1964 ed.) provides that award may be made on the basis of an initial proposal when it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. In that regard, we have cautioned that award may not be made on the basis of an initial proposal when that proposal substantially varies from the requirements of the RFP. Where an offer is unclear, containing inconsistent or ambiguous responses to specific RFP requirements, it becomes uncertain what the offeror is proposing to furnish and what the government is contracting for. Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD 144.

Here, we have no reason to question the Railroad's judgment that the five offers received constituted adequate competition, and that Bear Pump's offered price was fair and reasonable. See Bruno-New York Industries Corporation, B-184679, January 22, 1976, 76-1 CPD 36. Further, we cannot

conclude that Bear Pump's initial proposal was materially nonconforming, as argued by Chemex. The proposal only indicated high pressures for particular flow rates; Bear Pump did not take exception to the designated pressures; and the proposal specifically indicated that the nozzle pressures could be adjusted. Moreover, Chemex does not suggest that Bear Pump's offered systems were not the same as those previously demonstrated to the Railroad.

Finally, as the Railroad points out, the RFP does not solicit chemicals; although we recognize that Bear Pump did offer to furnish chemicals, we have no reason to believe that Bear Pump's washers would use chemicals that do not meet the Railroad's needs.

Therefore, we believe the Railroad acted reasonably in accepting the fact that Bear Pump's offered systems conformed to the RFP requirements, and in awarding a contract based on initial proposals.

The protest is denied.

for Harry P. Van Cleave
Comptroller General
of the United States