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

FILE: B-215610 **DATE:** July 23, 1984

MATTER OF: Defense Research Incorporated

DIGEST:

There exists no legal requirement that an agency reopen negotiations after the final closing date based solely on one offeror's claim that it will be able to lower its final price due to a delay in the award.

Defense Research Incorporated (DRI) protests the award of any contract under request for proposals (RFP) No. DAAA09-83-R-4838, issued by the Department of the Army for a quantity of ring mounts. DRI contends that the Army improperly has refused to reopen negotiations to permit offerors to submit revised best and final offers. We deny the protest summarily.

The relevant facts, according to DRI, are as follows. The RFP required that initial proposals be submitted by October 28, 1983. On January 31, following several requests for extensions of the 60-day acceptance period, the Army issued an amendment setting March 1 as the deadline for submission of final offers. The amendment established a 60-day acceptance period. DRI submitted its final offer on February 27. By mailgram of February 29, however, the Army extended the final closing date to April 1.

On March 17, the Army amended the RFP to include a material and workmanship guarantee clause. DRI acknowledged the amendment by letter of March 28 without changing its price. By mailgram dated May 11, the Army asked offerors to extend their acceptance period to June 29 due to a need for more time to evaluate proposals. DRI responded in a May 24 letter that it would extend only if the Army agreed to reopen negotiations to afford it and other offerors an opportunity to amend their prices. DRI claimed it would be able to reduce its price substantially due to delivery date extensions resulting from the acceptance period extensions.

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On May 30, DRI submitted what it terms an "alternate proposal" offering significant price reductions from its February 27 offer. The Army did not reopen negotiations but has not proceeded with the award.

DRI contends that the Army must reopen negotiations because the acceptance period extensions have resulted in "changed circumstances for DRI and likely other offerors." DRI argues that fairness dictates that offerors be permitted to alter their prices to reflect the impact of the delays.

There is no legal requirement that an agency reopen negotiations based solely on one offeror's claim that, due to the delay in award, it would be able to reduce its price. See generally Louis Berger & Associates, Inc., B-208502, March 1, 1983, 83-1 CPD ¶ 195. Indeed, although an agency may opt to reopen negotiations where it finds that doing so will be in the government's best interest, the general rule is that once negotiations have been held and final offers received, negotiations should not be reopened. See Cubic Defense Systems, division of Cubic Corporation, B-203597, Dec. 24, 1981, 81-2 CPD ¶ 493. The Army has not to date determined that reopening negotiations will serve the government's best interests.

DRI cites, in support of its position, Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD ¶ 175, which stands for the proposition that offerors should be permitted to revise their proposals where government requirements change significantly during negotiations. DRI seems to argue that the May 11 request for acceptance period extensions (approximately 30 days, from May 30 to June 29), constituted a significant change since it will delay delivery for a corresponding period. We do not consider the acceptance period extensions a significant change necessitating final offer revisions. To the extent that offerors would be adversely affected by such extensions, furthermore, they may choose to drop out of the competition by not extending their offers.

DRI's "fairness" argument is equally unpersuasive. The Army afforded DRI and the other offerors the same opportunity to negotiate and submit final offers by April 1. This constitutes equal, and thus fair, treatment of all offerors. An agency's refusal to reopen negotiations and establish a new common date for receipt of final offers at one offeror's request does not render an otherwise properly conducted procurement unfair.

DRI makes an additional argument that negotiations should be reopened to afford the Army the opportunity to receive the lowest price. Cutting off negotiations at a point in advance of the actual award date, however, could be expected to eliminate the possibility of further price reductions in every negotiated procurement. Such an approach nevertheless must be followed to maintain an orderly procurement process. Were the rule otherwise, an agency could be faced with the delays and confusion resulting from reopening negotiations one or more times in response to different offerors' requests for an opportunity to reduce their prices. Again, there exists no legal requirement that an agency permit a procurement to be disrupted in this manner.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States