

**DECISION**

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

29056

**FILE:** B-215706

**DATE:** August 13, 1984

**MATTER OF:** Asgard Technology, Inc.

**DIGEST:**

1. Protest that based upon the oral advice of a procuring official that negotiations would be reopened after the receipt of best and final offers, protester failed to submit its lowest price in its best and final offer is denied where solicitation warned offerors that oral instructions given prior to award are not binding on the government and provided the closing date by which final offers must be received.
2. Protest that procuring agency improperly permitted low offeror to reduce its otherwise low price after the receipt of best and final offers is denied because low offer submitted was successful offer and neither relative standing of offerors nor outcome of the procurement was affected.

Asgard Technology, Inc. (Asgard), protests the award of a contract to Papergraphics, Inc. (Papergraphics), under request for proposals (RFP) No. DLA400-84-R-0807, issued by the Defense Logistics Agency, Defense Supply Center, Richmond, Virginia (DLA). Asgard complains that based upon the oral advice of a procuring official that negotiations would be reopened after the receipt of best and final offers, the firm did not include its lowest price in its best and final offer. Award was made on the basis of the low acceptable offer.

With regard to the protester's allegation that DLA improperly refused to reopen negotiations after receiving best and final offers, we point out that negotiations should not be reopened after best and final offers are received unless it clearly is in the government's best interest to do so. Sperry Univac, B-202813, Mar. 22, 1982, 82-1 C.P.D. ¶ 264. Accordingly, there is no obligation on the part of the procuring activity to reopen negotiations after accepting best and final offers.

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Further, assuming that Asgard was erroneously advised that negotiations would be reopened, we point out that, generally, oral representations given prior to award are not binding and should not be relied upon. Stimulators Limited, Inc., B-208418, Nov. 23, 1982, 82-2 C.P.D. ¶ 473. In this regard, the procuring activity has advised that the RFP warned offerors that oral instructions given before award are not binding.

Asgard also protests that DLA improperly permitted Papergraphics to reduce its otherwise low price based upon the RFP provision which incorporates DAR § 7-2002.4(e). The regulation allows the government to accept a late modification to an otherwise successful offer which makes the terms more favorable to the government. Harris Corporation, B-204827, Mar. 23, 1982, 82-1 C.P.D. ¶ 274. Asgard believes that the regulation permits late bid modifications only after award and argues that DLA accepted Papergraphic's late price modification before determining that firm's product was acceptable.

DLA states that following the receipt of best and final offers, Papergraphics was determined to be the successful offeror and, therefore, the price modification was accepted.

The purpose of DAR § 7-2002.4(e) is to allow the government to accept more favorable terms from the low offeror that will be awarded the contract. Blue Cross of Maryland, Inc., B-194810, Aug. 7, 1979, 79-2 C.P.D. ¶ 93. DLA properly applied the regulation because Papergraphics submitted the low acceptable best and final offer and, therefore, neither the relative standing of offerors nor the outcome of the procurement was affected by the agency's acceptance of Papergraphics' late price modification. Rogers, Golden and Halpern, B-208014, Jan. 3, 1983, 83-1 C.P.D. ¶ 4; Blue Cross of Maryland, Inc., B-194810, supra.

Finally, Asgard complains the contract was improperly awarded by a procuring official other than the contracting officer. DLA has informally advised us that Ms. Hawthorne, the procuring official to whom the protester refers, is, in fact, the contracting officer.

Since the protest is clearly without legal merit, we have decided this matter without requesting a report from the contracting agency. DBA Systems, Inc., B-212101, July 6, 1983, 83-2 C.P.D. ¶ 65.

The protest is summarily denied.

*for* *Milton J. Rowland*  
Comptroller General  
of the United States