

Support
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DECISION



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

FILE: B-218914.3 **DATE:** August 14, 1985
MATTER OF: Standard Manufacturing Company, Inc.

DIGEST:

Allegation that the protester and the proposed awardee of a contract for weapons cradle adaptors were not competing on a common basis, on grounds that the proposed awardee has been granted numerous deviations and waivers under an existing contract for the same item, is without merit when the protester cannot demonstrate that the proposed awardee's lower-priced proposal was based on the granting of similar deviations and waivers.

Standard Manufacturing Company, Inc. protests the proposed award of a multi-year, fixed price contract to Dewey Electronics Corporation under request for proposals (RFP) No. N00140-84-R-1307, issued September 14, 1984 by the Naval Regional Contracting Center, Philadelphia, Pennsylvania. Standard contends that its firm and Dewey did not compete on a common basis or, alternatively, that the Navy is not negotiating on the basis of its minimum needs.

We deny the protest.

The RFP was for the acquisition of a quantity of cradle adaptors that are used for transporting weapons on board aircraft carriers. The contract was to be awarded on the basis of "price and other factors," and only unit and extended prices for various line items were to be provided; no technical proposals were required. The items currently are being manufactured by Dewey under a contract awarded in June 1981; before that they had been manufactured by Standard.

Standard argues that Dewey has been given many deviations and waivers and that its deliveries under its current contract are seriously delinquent. Standard

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contends that Dewey has only been able to perform because of these deviations and waivers and alleges that Dewey's proposal must be based on receiving similar deviations and waivers. Standard further argues that it also should have been permitted to submit a proposal based upon being granted deviations and waivers, asserting that the Navy should have amended specifications and drawings to incorporate the substance of them. Standard indicates that its price would have been significantly lower if this had been done. Finally, Standard argues that it is improper for the Navy to enter into a contract knowing it will be granting deviations and waivers in order for the contractor to perform.

In its report on the protest, the Navy stresses that there have been historic difficulties in manufacturing the weapons cradle adaptors to exact tolerances and states that it seeks complete compatibility and interchangeability of parts. Among the problems listed are stringent heat treating requirements, machining of convex, concave, and concentric areas, and strict welding requirements to ensure strength and stability in the fully assembled and loaded weapons cradle adaptors. The Navy advised offerors, in a letter requesting best and final, that they should consider these factors when estimating their costs.

The Navy also states that deviations are granted on a case-by-case basis and will vary among contractors and/or contracts for the same items. In addition, the agency points out that waivers are not prospective, but only apply to finished items, so that it would not have been possible to incorporate them in the RFP.

In this particular procurement, the Navy concludes, Dewey and Standard competed on a common basis in that both firms responded to the same RFP. Dewey submitted its proposal without taking any exception to the specifications. Although an April 1985 preaward survey report shows an unsatisfactory performance record, Dewey's quality assurance, finance, accounting, property control, and packaging reports were satisfactory, and the contracting officer found Dewey to be a responsible offeror. The Navy also states that the Dewey proposal is not based upon any "secret" commitment by the government to grant deviations or waivers.

Commenting on the Navy report, Standard goes into extensive technical detail on each of the 43 deviations and waivers allegedly granted to Dewey over the past 4 years

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and attempts to show that, contrary to the Navy's assertions, these represent major departures from the specifications and are not in any way comparable to the purportedly minor deviations and waivers granted to Standard under the predecessor contract.

In light of the Navy's statement that deviations are granted on an individual basis and that waivers are not granted until the time of production, it does not appear that amendment of the drawings and specifications was appropriate in this case. We do not believe that Standard has made a sufficient showing that the granting of deviations and waivers to Dewey under the current contract will inevitably require the granting of similar deviations and waivers under the new one, so that offerors were not competing on an equal basis. Standard in effect wishes us to infer this from Dewey's past performance.

We are not willing to do so. Rather, since proposals consisted solely of unit and extended prices, and there were no technical proposals in which offerors might take exception to the drawings and specifications, we believe it reasonable to conclude that Standard's assessment of the risks outlined by the Navy as inherent in production was simply higher than Dewey's.

Standard's alternate basis of protest, that the Navy overstated its needs, essentially recites the same facts using a different legal theory. Under either theory, we will not sustain a protest on the basis of mere speculation and innuendo, which is what Standard is engaging in here. See Ed Davis Construction, Inc., B-216353, Feb. 22, 1985, 85-1 CPD ¶ 226; Kepner-Tregoe, Inc., B-216255, Dec. 14, 1984, 84-2 CPD ¶ 667.

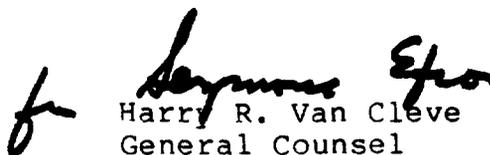
To the extent that Standard's contention that Dewey cannot perform the new contract in accord with specifications challenges the contracting officer's affirmative determination of responsibility, our Office will not review such a determination unless there is a showing of possible fraud on the part of the contracting officials or an allegation of misapplication of definitive responsibility criteria. See AT&T Information Systems, Inc., B-216386, Mar. 20, 1985, 85-1 CPD ¶ 326. Neither is present here. To the extent that Standard is alleging that the Navy has improperly granted Dewey waivers and deviations in the past, this concerns contract administration, and we do not review such matters in our bid protest function. See Bay Decking Co., Inc., B-216248, Jan. 22, 1985, 85-1 CPD ¶ 77.

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In responding to comments submitted by Dewey, the proposed awardee, Standard raises an additional issue: that the awardee's price was improperly disclosed by the Navy and was subsequently disseminated through the trade press. Dewey suggests that in view of this disclosure, the integrity of the competitive system would be compromised if the Navy reopened negotiations. Standard responds that it is willing to have limited information regarding its own prices disclosed to Dewey.

Since the Navy's press release apparently was dated May 20, before filing of the protest, we find no impropriety in the announcement of the proposed award price. And in view of our conclusion that Standard's protest is without merit, we need not consider whether there would be any problems in reopening negotiations.

For the reasons indicated above, the protest is denied.


Harry R. Van Cleve
General Counsel