

DECISION

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

FILE: B-219582 **DATE:** November 13, 1985
MATTER OF: American Electronic Laboratories, Inc.

DIGEST:

1. Where, before award, a protester points out that its best and final offer may have been erroneously evaluated and argues that cost and pricing data submitted with its initial proposal clearly establishes what price it intended to offer, the protester is in effect claiming a mistake in its proposal and the contracting agency should follow the regulatory procedures applicable to such claims.
2. When protester, claiming that its price was erroneously evaluated, as shown by cost and pricing data submitted with initial proposal, does not submit additional cost and pricing data during several rounds of best and final offers, it is not possible without reopening discussions to determine exactly what price the protester intended to offer in its final submission. Since this would result in the use of prohibited auction techniques, the proposed award to an allegedly higher priced offeror is not subject to objection.

American Electronic Laboratories, Inc. protests the proposed award of a contract to the Raytheon Service Company under request for proposals (RFP) No. N60921-85-R-A270, issued on December 10, 1984, by the Naval Surface Weapons Center, Dahlgren, Virginia. American argues that the contracting officer erroneously added \$15,000 to its offered price, displacing the firm as the low offeror and putting Raytheon in line for the award.

We deny the protest.

The RFP solicited offers to provide metrology services (i.e., to test, calibrate, and repair electronic equipment) at the Naval Surface Weapons Center and other field

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The remaining line items (Nos. 0003 and 0004) involved the 2 option years for each type of facility and referred back to the services covered by subitems Nos. 0001AA and 0001AB. Section B provided no "bottom line" where a total figure for either type of facility could be placed, and it did not include a line item for travel for either of the option years. The Navy now states that the \$15,000 was intended to cover the entire 3-year contract term.

The agency received five proposals, including the government's, and held discussions with the private contractors. After requesting and receiving three rounds of best and final offers, the last on June 11, 1985, the agency prepared an abstract showing offerors' prices for each year and determined that the following total prices, exclusive of travel, had been offered for operation of a GOCO facility (which it had decided to use):

Raytheon	\$1,602,180
American	1,611,897
Government	2,295,103

(The other two offers exceeded the estimated cost of performing in-house.)

Upon learning of the Navy's intent to make an award to Raytheon at the above price, American notified the agency that item No. 0001AB of its best and final offer had included \$15,000 for travel costs. Based on this, American argued that its total evaluated price should have been \$1,596,897 (\$1,611,897 minus \$15,000) for the GOCO facility. The Navy, however, responded that it had evaluated the offer properly because none of American's submissions indicated that its price included travel costs. When American learned of the Navy's decision, it protested to our Office, arguing that information submitted with its initial proposal clearly establishes its intended price.

In effect, American is claiming that it made a mistake in formulating its offer--that is, it erroneously included travel costs in the line item. The Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.607 (1984), provides specific procedures for a contracting officer to follow when a mistake is suspected or alleged before award in a negotiated procurement. In general, it contemplates that the mistake will be resolved through clarification or discussions. *Id.* §§ 15.607(a) and (b). Discussions are required if communication with the offeror claiming the mistake prejudices the interest of other offerors, *id.*

§ 15.607(a), or if correction requires reference to documents, worksheets, or other data outside the solicitation and the proposal to establish the existence of the mistake, the proposal intended, or both. Id.
§ 15.607(c)(5).

The regulation does not specifically cover the situation here--a mistake claimed before award but after the agency has completed discussions and announced the proposed contract price. Nevertheless, we believe the principles inherent in the regulation are applicable. An examination of American's SF 1411 and attachments make it clear that American made a mistake in its initial offer, as well as what price the firm intended to offer.

American's intended treatment of travel costs appears in its cost and pricing data, attached to Standard Form (SF) 1411, "Contract Pricing Proposal Cover Sheet." Offerors submitted this information to comply with paragraph L.2.2.2 of the RFP, which instructed them to provide "full cost and pricing data" as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.804-2 (1984). American's attachments, in which labor, materials, overhead, profit--and travel costs--are broken out, indicate that its price, as inserted for the alternate approaches under line items Nos. 0001, 0003, and 0004 in its Section B price proposal, and as typed on its SF 1411 cover sheet, includes \$15,000 a year for travel costs. In other words, it appears that at least in its initial proposal, American did not include just \$15,000 for travel costs, as its protest indicates, but \$45,000 (\$15,000 a year for each of 3 years). Although American revised its prices in subsequent best and finals, it did not submit revised cost and pricing data.

It appears that in Raytheon's initial proposal, that firm also mistakenly included an additional \$30,000 to cover travel costs for the 2 option years. In its Section B price proposal, prices for both the COCO and GOCO approaches under line items Nos. 0003 and 0004 are followed by an asterisk. A typewritten note at the bottom of Raytheon's Section B states that these line items included "same estimated \$15,000 (NTE) of travel as for Base year." Raytheon's initial cost and pricing data confirms this. Thus, Raytheon at first did exactly what American did and included travel costs as part of its price. Raytheon, however, excluded the \$15,000 a year in travel costs for the second and third years from its subsequent best and finals, as is shown by revised cost and pricing data submitted with them.

However, since American, unlike Raytheon, never submitted updated cost and pricing data during the three rounds of best and final offers, it is unclear whether its pattern of including \$15,000 a year in travel costs as part of its proposed price continued. This uncertainty is increased by the fact that American's prices went up during the rounds of best and final offers, thus making it even more difficult to determine how American actually reached its final price, i.e., whether it continued to include travel costs in its total price or eventually dropped them as Raytheon did. Another difficulty in determining American's intended final price is the fact that it only claims a \$15,000 mistake, when its cost and pricing data shows that it had actually added a total of \$45,000 in travel costs to its initial proposed price.

Normally, our recommendation here would be that the Navy reopen discussions and request another round of best and final offers. This is because correction of the mistake would displace Raytheon. In addition, in our opinion, it is impossible to determine American's intended price from the proposal itself. It would therefore be necessary to refer to documents, worksheets, or other data outside the American proposal before correction could be accomplished. Applying the FAR principles, discussions with all offerors in the competitive range, i.e., Raytheon and American, would be appropriate. In this case, however, since the prices of both have now been exposed, such action would result in the use of prohibited auction techniques, see FAR, 48 C.F.R. § 15.610(d)(3), and in our opinion, would compromise the integrity of the competitive system. Therefore, we do not believe further discussions would be appropriate, and we will not object to the award to Raytheon.

We deny the protest.

Harry R. Van Cleve
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General Counsel