

DECISION

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

FILE: B-221723 **DATE:** February 10, 1986
MATTER OF: Joseph L. De Clerk and
Associates, Inc.

DIGEST:

1. In a negotiated procurement, all offerors in the competitive range generally must be given an opportunity to revise their proposals and to submit best and final offers. Request for such offers, even though one offeror is rated superior to another, therefore is not improper since ranking may change on the basis of best and finals.
2. Unless the solicitation so provides, in a negotiated procurement there is no requirement that award be made on the basis of lowest proposed price or cost.
3. Where a protester fails to offer any evidence that the agency disclosed proposed prices to other offerors, its contention in this regard is mere conjecture and provides no basis to sustain a protest.

Joseph L. De Clerk and Associates, Inc. (De Clark), protests the proposed award of a contract to Nations, Inc., under request for proposals (RFP) No. DAAB07-85-R-K040, issued by the United States Army Communications-Electronics Command, Fort Monmouth, New Jersey. The solicitation covers installation and training in the use of security devices for FM radio operations. We dismiss the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985).

De Clerk argues that since the contracting officer knew that Nations had a superior technical rating, he should not have requested a best and final offer from De Clerk and only did so to force Nations to lower its price. De Clerk also alleges that, as the low offeror, it should have received award, and that the Army unfairly disclosed De Clerk's price to Nations and to technical evaluators before receipt of best and final offers.

034519

In negotiated procurements, agencies must conduct written or oral discussions with all responsible offerors within the competitive range before awarding a contract. These offerors must be given an opportunity to revise their proposals, including cost or price, by a common cutoff date. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609-15.611 (1984). In limited circumstances, award may be made on the basis of initial proposals, without discussions and best and final offers. Id. § 15.610. However, even where the circumstances are present, award on the basis of initial proposals is permissive, not mandatory. Windham Power Lifts, Inc., et al., B-214287, May. 7, 1984, 84-1 CPD ¶ 278, aff'd on reconsideration, June 18, 1984, 84-1 CPD ¶ 638. De Clerk's proposal was included in the competitive range, and its ranking compared with that of Nations might have changed on the basis of best and final offers. Thus, the Army's request of such an offer from De Clerk was proper.

Unless the solicitation so provides, there is no requirement that award in a negotiated procurement be made on the basis of lowest cost. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715. The protester has not shown that this was the case here. In any other circumstances, agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; tradeoffs may be made, and the extent to which one factor may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation scheme. Id. The protester here does not allege either inconsistency with the stated evaluation scheme or unreasonableness on the part of the agency. It merely asserts that it was the low offeror--at least on one item. Therefore, De Clark's contention that it should have received an award based on its low offer is without merit.

With respect to the protester's third allegation, applicable regulations prohibit disclosure and use of information contained in proposals, specifically that which might afford a prospective contractor a competitive advantage. FAR, § 15.413. The fact that the successful offeror reduces its price in a best and final offer does not establish that the protester's price was revealed. Kisco Co., Inc., B-216646, Jan. 18, 1985, 85-1 CPD ¶ 56. De Clerk has not presented any evidence that the Army disclosed its proposed price to Nations, and its contention apparently amounts to mere conjecture. Our Office will not find improper action

by an agency based on such conjecture or inference. Beech Aerospace Services, Inc., B-219362, Aug. 20, 1985, 85-2 CPD ¶ 203. In addition, even if the members of the agency's technical evaluation team had access to offeror's price proposals, we are not aware of any restriction on such disclosure. David A. Clary, B-200877, Apr. 28, 1981, 81-1 CPD ¶ 326.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel