

DECISION

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

FILE: B-222151 **DATE:** June 12, 1986
MATTER OF: Action Manufacturing Co.

DIGEST:

1. Contracting agency properly may reopen discussions and request a second round of best and final offers where the agency realizes it failed to request needed information during discussions and further discussions are needed to evaluate a proposal.
2. The mere request for a best and final offer constitutes adequate discussions where the offeror's proposal contains no deficiencies.
3. Review of the protest record discloses nothing to indicate that the agency created an auction either by disclosing the relative price standing of offerors or by requesting a second round of best and final offers merely to afford one offeror a competitive advantage.

Action Manufacturing Co. protests the request for a second round of best and final offers under request for proposals (RFP) No. DAAA09-85-R-0744, issued by the Army Armament, Munitions and Chemical Command. The RFP is restricted to current mobilization base producers and contemplates the acquisition of two items--detonating fuzes and separate safety and arming assemblies--on a firm-fixed-price basis. The RFP's Evaluation and Award Factors provide that the award will be made on the basis of the lowest overall price, including a price factor to eliminate any offeror's competitive advantage arising from the rent-free use of government property already in the offeror's possession. The Army reopened discussions in order to obtain information necessary to apply this evaluation factor for the proposal of Action's competitor.

We deny the protest.

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The RFP states that the evaluation factor for the rent-free use of government property will be added to the offeror's price of the item or items, and that the offeror must compute the factor by adding the government's original acquisition costs of acquiring the equipment, a stipulated rental rate based on the age of the equipment, plus the number of months in the production period. The sum is divided by the quantity of items being procured. The RFP contains a single blank space for the offeror to submit the computed amount.

After conducting discussions and requesting an initial round of best and final offers, the contracting activity realized that although two items were being procured, Action's competitor submitted one amount as the factor for the use of government property without indicating how the factor would apply to the individual items. The contracting activity determined that it therefore was necessary to ask the competitor for a written statement of the government-property factor for each item, along with the figures used to compute the factor. The contracting activity issued the competitor a request for a second best and final offer that would include such a statement. At the same time, Action was afforded the opportunity to submit a second best and final offer.

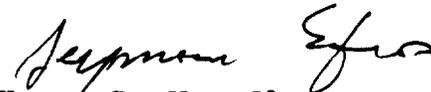
Action contends that there was no valid reason to reopen discussions. Action also complains that the contracting activity only requested a second best and final offer from Action without conducting adequate discussions, and speculates that the purpose for reopening discussions was to engage in auction techniques.

Applicable procurement regulations provide that after the receipt of best and final offers the contracting officer may reopen discussions where it is clearly in the government's interest to do so, e.g., where it is clear that the available information is not sufficient to reasonably justify contractor selection. Federal Acquisition Regulation, 48 C.F.R. § 15.611(c) (1984). Under this authority, the agency clearly had discretion to reopen discussions when it realized that during discussions it had failed to point out the need for computing the government-property factor on an item-by-item basis and that further discussions were necessary to ascertain the correct amounts for that factor. See also Standard Mfg. Co., B-220455, Mar. 31, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 304.

Regarding Action's complaint that the Army did not conduct adequate discussions since it only requested Action to submit a second best and final offer, the mere request for a best and final offer constitutes adequate discussions where a proposal contains no deficiencies. See Weinschel Eng'g Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574. Moreover, since Action's proposal was not rejected for any deficiency, the failure to conduct detailed discussions did not adversely affect the protester. See Security Sys., B-217203, Aug. 26, 1985, 85-2 CPD ¶ 229.

Action's concern that the Army might have engaged in auction techniques is based on the mere fact that the Army reopened discussions without requesting anything more than a second best and final offer from Action. Since no award has been made, Action has not had an opportunity to review its competitor's proposal and the agency's record of discussions to verify the propriety of reopening discussions. We have reviewed these materials, however, and find no indication that the Army improperly created an auction either by disclosing the relative price standing of offerors or requesting second round of best and final offers merely to afford another offeror a competitive advantage. See Kisco Co. Inc., B-216646, Jan. 18, 1985, 85-1 CPD ¶ 56; see also Research Analysis & Management Corp., B-218567.2, Nov. 5, 1985, 85-2 CPD ¶ 524.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel