



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: All Diesel Power, Inc.

File: B-224453

Date: October 2, 1986

DIGEST

In a competitively negotiated procurement, it is not improper for agency to obtain clarification of initial offer which appears to be nonconforming to solicitation requirements where information requested does not materially change offer.

DECISION

All Diesel Power, Inc. (ADP) protests the award of a contract to Flexonics, Inc. under request for proposals (RFP) No. DLA-700-86-R-1478, issued by the Defense Logistics Agency (DLA) for 45 expansion bellows. ADP protests the award on the basis of its assumption that it offered the lowest price for the expansion bellows and that Flexonics did not offer the item required.

We deny the protest.

The RFP solicited a specific expansion bellow originally manufactured by Alco Power and identified by its part number. The RFP also permitted offers of alternate products and provided for evaluation and approval of alternates. Four companies submitted offers under this RFP. The two low offerors, ADP and Flexonics, offered alternate products. DLA requested that each firm submit additional data for the evaluation of its alternate offer. Flexonics was requested to provide evidence that it was a supplier of the required bellows to Alco Power, the approved original equipment manufacturer source. ADP states that it was requested to prove that its supplier was a qualified source. DLA also asked that all offerors extend their offers because of the need to evaluate the alternates. Based on the data submitted, DLA found both offers technically acceptable. The agency subsequently informed ADP that its proposal was "not low after consideration of all evaluation factors," and that award had been made to Flexonics, Inc. of Bartlett, Illinois.

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In its protest to our Office, ADP contends that the fact that the agency requested data concerning its supplier was an indication that ADP was the low offeror. The protester alleges that after it identified Flexonics, Ltd. of Canada as one of its suppliers, and agreed to extend its own offer, the agency improperly sought and obtained a proposal from Flexonics, Inc. of Bartlett, Illinois. (According to Flexonics, Flexonics of Bartlett, Illinois, is a "Sister Division" to Flexonics of Canada, but they are separate entities with regard to their business activities.) In its comments on the agency report, ADP argues further that the award to Flexonics was improper because Flexonics' offer was not for the item required.

The agency states that the information it requested from ADP was necessary for the evaluation of the offers of alternate products. The agency further states that, as a matter of standard procedure, it requests the data for alternate offers from all such offerors at the same time to facilitate evaluation. The agency asserts that while the protester may have inferred from its request that it was the low offeror, the contracting officials never advised ADP that it was in line for award. The agency also explains that the offerors were requested to extend the effective period of their offers because they were soon to expire and more time was needed to complete the evaluation process.

We note that the record indicates that both offers were submitted prior to April 2, 1986, the closing date for receipt of proposals. Flexonics' offer bears the same date as ADP's--March 21, 1986. In addition, the record shows that ADP's price was more than double that of Flexonics. The record, therefore, provides no support for the protester's speculation that it submitted the low offer, after receipt of which the agency used information provided by the protester concerning its sources of supply to solicit a late proposal from Flexonics. Also without merit is ADP's allegation that the award to Flexonics is improper because it is for an item different from that upon which offers were solicited.

At the outset, we note that ADP appears to be under the mistaken impression that this procurement is subject to the same solicitation procedures that would be applicable to a sealed bid/formally advertised procurement. The solicitation clearly specifies that the procurement is a negotiated one. Under the procedures for competitive negotiations, an offer which initially appears to be nonconforming to the solicitation need not be rejected if it is reasonably susceptible of being made acceptable. It is, therefore, not improper for the contracting agency to request clarification of an initial

offer where the necessary information does not result in material changes to the offer. Los Angeles Community College District, B-207096.2, Aug. 8, 1983, 83-2 C.P.D. ¶ 175 at 5.

The RFP described the item being purchased by National Stock Number and as one manufactured by Alco Power, Auburn, New York, under its part No. 22820133-1. Beneath the item description were blanks in which each offeror was to indicate the manufacturer's name and part number on which its offer was based. On this page, immediately beneath the Alco part number, Flexonics wrote:

"Flexonics has all necessary data to manufacture this item and has supplied same to Alco on [various purchase orders] since 1966. If data presentation is necessary, please call."

In the blanks provided for this purpose, Flexonics indicated its offer was based on Flexonics part No. "310-405-5001 (06116)." When, subsequent to receipt of offers, Flexonics was asked to provide evidence that it was a supplier of the part to Alco Power, Flexonics responded by a message in which it stated, in part, "We are taking no deviation of any sort since we are quoting exactly to your request. We have made this part for Alco many times in the past." Flexonics followed this advice by a letter, to which it attached two telegrams from Alco "as proof that Flexonics is the manufacturer of Alco Catalog #22820133-1." In these telegrams, Alco identified its part No. 72-08120-559, its catalog No. 22820133-1, and Flexonics part No. 310-405-5006 all as referring to the same item for which, Alco stated, "Flexonics has been an approved source . . . for many, many years" and "still is the approved source [at the present time]."

The DLA buyer then asked her technical advisors whether Flexonics part No. 310-0405-5001 (06116) was an acceptable item, and received the reply that "Flexonics . . . P/N 310-405-5006 is an approved source for Alco Power . . . P/N 72-08120-559."

In the Schedule portion of Flexonics' contract, beside the item description and immediately above its price, is handwritten "96142 [Flexonics' source code] P/N 310-405-5006."

It does appear that Flexonics' initial offer was based on its own inappropriate part No. -5001. When asked by DLA to establish that it was a manufacturing source for the Alco part specified in the RFP, however, Flexonics provided evidence upon which DLA concluded that Flexonics' part No. -5006 was the equivalent of the Alco part, and it is the

-5006 part number which is written on the Schedule portion of Flexonics' contract. Whatever uncertainty existed as to the part number Flexonics was offering, and its acceptability, was cleared up through these communications between Flexonics and DLA and we have no reason to believe that DLA will receive anything other than an acceptable item.

The protest is denied.

for Seymour Gros
Harry R. Van Cleve
General Counsel