



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carter Chevrolet Agency, Inc.

File: B-225522

Date: February 24, 1987

DIGEST

1. Award of a fixed-quantity contract to the low priced offeror for a quantity less than that specified in the solicitation does not constitute discussions with that offeror which would necessitate the holding of similar discussions with the other higher-priced offerors.

2. Protest against specification modification filed more than 10 days after protester knew the basis for protest is untimely and will not be considered on the merits.

DECISION

Carter Chevrolet Agency, Inc. (Carter), protests the award of a contract for 14 light trucks to JKJ Chevrolet (JKJ), under request for proposals (RFP) No. FCAP-A1-71922-N-7-17-86, issued by the General Services Administration (GSA). Carter asserts that GSA amended the RFP after best and final offers had been received--to reduce the award quantity--and allowed JKJ to modify its proposal without advising other offerors of the change or providing them with an opportunity to revise their proposals. Carter also alleges that JKJ was permitted to offer under more relaxed specifications than was Carter.

We find the protest without merit.

The RFP was issued by GSA, on behalf of the Navy, on an emergency basis and contained four line items totaling 18 light trucks to be delivered to four locations. The RFP provided for award to be made on an item-by-item basis. The closing date for initial proposals was August 12, 1986. Four offers were received, including Carter's, which was submitted on an all-or-none basis, and JKJ's, which contained no such limitation, but which did take exception to three of the RFP specifications. GSA called for best and final offers to be submitted by October 8, 1986.

On October 7, the GSA contract specialist telephoned the four offerors and advised them that the specifications had been relaxed in four respects: (1) 95-inch overall vehicle body width was made acceptable; (2) a 100-mile limitation on driveaway delivery was deleted, (3) highway tread tires were made acceptable, and (4) a special traction requirement for the rear drive wheels was canceled. These changes resulted in JKJ's three exceptions to the specifications being resolved. Written verification of the modification was transmitted to all four offerors on the same day.

Carter's best and final offer, on an all-or-none basis, per vehicle was \$26,200 for item 1, \$26,297 for item 2, \$27,099 for item 3, and \$27,321 for item 4. Two of the other three offerors had submitted offers which were lower priced for all items than Carter, and the third offer was lower than Carter on three of the four items. JKJ's offer, which was not all-or-none, was lowest for items 1, 2, and 4. On October 8, the Navy advised GSA that due to the unavailability of funds, none of the three vehicles specified under item 3 could be purchased, and item 4 was reduced from two vehicles to one vehicle. Because of the exigent nature of the procurement, GSA determined that it was not in the government's best interest to reopen discussions. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.611(c) (1986). Award was made to JKJ on October 10 for all 14 of the trucks under the remaining items. Carter learned of the award in a Commerce Business Daily notice on November 25, and protested to our Office on November 26.

As a preliminary matter, GSA contends that Carter is not an interested party to protest the award under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1986), because there were intervening lower offerors for all the items, and Carter would not be in line for award even if its protest were sustained. However, Carter is not merely protesting the award to JKJ; rather Carter is asserting that it was denied an opportunity to compete on an equal basis with JKJ, and requesting resolicitation as relief. If Carter's protest were sustained, the requested relief would give Carter another opportunity to compete. Under these circumstances, Carter has a sufficient economic interest to be considered an interested party under our Regulations. General Electrodynamics Corp., B-221347.2, B-213477.3, May 13, 1986, 86-1 C.P.D. ¶ 454.

Carter contends that GSA's reduction in the total quantity of vehicles shows GSA improperly conducted discussions with JKJ, without affording the other offerors the same opportunity.

Carter also points to a letter to GSA from JKJ, dated October 9, which states that: "we will accept a contract on all items awarded," as evidence that GSA engaged in discussions with JKJ after the submission of best and final offers. GSA explicitly denies that it engaged in any discussions with JKJ after best and final offers were submitted. There is no evidence in the record that JKJ's October 9 letter was in response to any inquiry from GSA. Moreover, paragraph 17 of the solicitation provisions (GSA form 3501, which was incorporated by reference under the RFP) explicitly reserved to the government the right to make an award on any item for a quantity less than the quantity offered, at the unit price offered, unless the offeror specified otherwise. Since JKJ's offer, unlike Carter's, did not contain an all-or-none qualification, there was no necessity for JKJ to add this provision to enable GSA to make the award on a lesser quantity than was specified under the RFP.

Carter also disputes GSA's statement of what information was conveyed by GSA to Carter's representative during the October 7 telephone call in which GSA amended the RFP. In particular, Carter asserts that it was advised of the first three specification relaxations, but was not told that the special traction requirement was being deleted. In support of this contention, Carter has submitted a copy of two -- written follow-up messages which it received from GSA after the closing date, the first of which states that the special traction rear axle is required. The second message, which is designated as a corrected message, indicates that the special traction rear axle is not required. In addition, Carter asserts that oral amendment of the RFP specifications was improper.

Carter's contentions in this regard are untimely. Our Bid Protest Regulations require a protester to file its protest not later than 10 days after the date on which the basis of protest was known or should have been known. 4 C.F.R. § 21.2(a)(2). Since Carter states that it did not receive the two written confirmation messages until October 14, after the October 8 deadline for submission of best and final offers, Carter knew that the modification had been made orally rather than in writing by October 8. On October 14, Carter learned that the written modification contained the alleged new fourth item, that is, the special traction relaxation, which Carter asserts had not been conveyed in the telephone amendment. Since Carter's protest was not filed in our Office until November 26, more than 10 days later, these allegations are untimely and not for consideration. We note,

however, that under the FAR, 48 C.F.R. § 15.606(a), oral modifications followed by written confirmation, such as were effected here, are explicitly permitted where time is of the essence.

The protest is denied in part and dismissed in part, and the claim for proposal preparation costs and bid protest costs is also denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel