



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: JGB Enterprises, Inc. *Amended*

File: B-225058

Date: March 13, 1987

### DIGEST

The General Accounting Office sustains a protest where the procuring agency awarded a contract on the basis of initial proposals, but there was a reasonable chance that by conducting discussions the agency would find a proposal offering a lower overall cost to the government to be more advantageous under the evaluation factors listed in the solicitation.

### DECISION

*Amended*  
*200-100*

JGB Enterprises, Inc., protests the award of a contract to Heale Manufacturing Co., Inc., under request for proposals (RFP) No. DLA700-86-R-2761, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio, for 653 wiring harness units. JGB contends that DCSC improperly rejected its low priced alternate product as technically unacceptable.

We sustain the protest.

The RFP listed two acceptable small business sources of supply, Heale part No. XH-7860 and Murdock Enterprises part No. 871-5102671, and also listed the prototype large business part, Detroit Diesel Allison part No. 5102671. Offerors were permitted to submit alternate products pursuant to the RFP's "Products Offered" clause. The clause requires offerors of alternate products to furnish drawings, specifications, or other data to enable the government to determine the acceptability of the product and further warns offerors that the failure to furnish sufficient information may preclude consideration of the offer. The clause further advises that if the government cannot determine the acceptability of the product by the expected award date then the product will be considered unacceptable.

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On May 27, 1986, the closing date for the receipt of initial proposals, DCSC received five offers in response to the RFP. JGB was the lowest priced offeror and it offered an alternate product, which it had reverse engineered from the Detroit Diesel part. JGB's offer included the necessary drawings for DCSC's evaluation. On July 10, 1986, after performing the initial evaluation, DCSC determined that JGB's drawings were insufficient to establish the acceptability of its product. On July 31, 1986, after reevaluating JGB's drawing, DCSC determined that JGB needed to furnish the Detroit Diesel part so that it could be compared with JGB's drawing. Following receipt of the part from JGB, on August 11, 1986, DCSC determined that JGB's alternate product was technically unacceptable because of an ambiguity between label No. 5 on the drawing and the parts list on the drawing. The balloon label designated on the drawing as No. 5 pointed to a connector assembly while the parts list No. 5 referred to a lug terminal. The part called for a connector assembly. Concluding that the ambiguity might give rise to the possibility for improper assembly, DCSC rejected the proposal. On October 20, 1986, DCSC awarded the contract to Heale, the next lowest offeror, which offered its approved part. On October 30, 1986, performance was suspended because of the protest.

DCSC reports that the inaccuracies in JGB's drawing could not have been corrected without requesting the details of the connector assembly. JGB contends that the ambiguity was a patent one that could have been easily corrected. JGB advises that the line from balloon label No. 5 pointed to a connector, not a terminal and that on the Detroit Diesel part a connector also appears at this point. JGB states that more than 2 months elapsed between the time it was rejected and the award to Heale. JGB argues that had there been meaningful negotiations, DCSC would have allowed it to make this minor revision to its drawing.

We have held that the procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's item and that we will not disturb the technical determination by the agency unless it is shown to be unreasonable. See Rotair Industries, Inc., B-219994, Dec. 18, 1985, 85-2 C.P.D. ¶ 683.

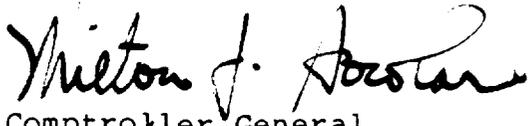
However, the Competition in Contracting Act of 1984 (CICA) requires that in negotiated procurements agencies must conduct discussions with all responsible offerors who submit proposals within the competitive range except "when it can be clearly demonstrated from the existence of full and open competition

or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the government." 41 U.S.C. § 253B(d)(1)(B) (Supp. III 1985). Offerors in the competitive range are those whose proposals have a reasonable chance of being selected for award. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609 (1986). In our view, this provision of CICA prohibits agencies from accepting an initial proposal that is not the lowest considering only cost and cost related factors listed in the RFP, where there is a reasonable chance that by conducting discussions, another proposal would be found more advantageous to the United States under the evaluation factors listed in the solicitation. Training and Information Services, Inc., B-225418, Mar. 9, 1987, 87-1 C.P.D. ¶ \_\_\_\_.

Based on our examination of the discrepancy in JGB's drawing, we find that it was inappropriate for DCSC to have rejected JGB's low proposal without first conducting discussions because of the CICA requirement for full and open competition so as to assure award at the lowest overall cost to the government. The ambiguity contained in JGB's drawing appears to be the kind of deficiency that could have been resolved through negotiations, but JGB was not advised of the deficiency until after award to Heale. JGB alleges that the label No. 5 pointing to a connector accurately reflects the part as a connector and DCSC has not rebutted this allegation. Given that the ambiguity in the drawing could have been removed by simply having JGB correct the parts list drawing, we believe that JGB had a reasonable chance of being selected for award. JGB correctly notes that the reason given for the rejection of its offer was the ambiguity in its drawing, and not the need to supply greater detail with respect to the connector assembly. Even accepting DCSC's position that it would have been necessary to require JGB to submit the details of the entire connector assembly, we find that DCSC could have remedied the problem with JGB through the discussion of the need for greater specificity. Since DCSC did not make award until October 20, 1986, we conclude that there was no reasonable basis for DCSC not to have conducted discussions with JGB.

The protest is sustained. By separate letter, we are recommending that DCSC enter into discussions under the RFP with JGB and all other offerors who fall within the competitive range. If best and final offers show that a firm other than the awardee is entitled to the contract, DCSC should terminate the awarded contract and award a new one. If the current awardee submits the best proposal and the price is

lower than the contract price, the contract should be modified accordingly. See Consolidated Bell, Inc., B-220425, Mar. 11, 1986, 86-1 C.P.D. ¶ 238.

*for*   
Comptroller General  
of the United States