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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carson Optical Instruments, Inc.

File: B-228040
October 19, 1987

Date:

DIGEST

Cancellation of request for proposals was proper where, due to ambiguity of specification, offerors were not competing on a common basis.

DECISION

Carson Optical Instruments, Inc. protests both the termination of a contract awarded to it under request for proposals (RFP) No. DADA01-87-R-0011, issued by the Army for an ophthalmic laser, and the Army's subsequent decision to cancel the RFP and resolicit based on revised specifications. We deny the protest.

The RFP, which called for offerors to furnish and install an ophthalmic laser at Letterman Army Medical Center, provided that award would be made to the lowest priced offeror whose product met or exceeded the specifications set out in section C-1 of the RFP. Four proposals were received. Three of the four offerors, including Carson, were found technically acceptable and submitted best and final offers. Award then was made to Carson, the lowest priced offeror.

The second lowest offeror, CooperVision, Inc., protested the award to Carson to the Army, arguing that the laser Carson offered failed to meet two of the specifications in the RFP relating to "spot size" and "burst mode." The Army agreed, and subsequently terminated Carson's contract. Carson then filed its protest with our Office maintaining that its laser met all the specifications in the RFP.

After terminating Carson's contract, the Army initially planned to make award to CooperVision, the next lowest priced, technically acceptable offeror. In its report on the protest, however, the Army stated that while it still believed that Carson did not meet the spot size and burst mode specifications as the Army interpreted them, in its

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view the two specifications were ambiguous and justified canceling the RFP and resoliciting, instead of making award to CooperVision. Carson now contends both that the cancellation was not justified because the specifications are not ambiguous, and that its laser meets the specifications under the only reasonable interpretation.

In a negotiated procurement, contracting officials need only demonstrate a reasonable basis for cancellation after receipt of proposals, as opposed to the "cogent and compelling" reason required for cancellation of a solicitation where sealed bids have been opened. AWD Mehle GmbH, B-225579, Apr. 16, 1987, 87-1 CPD ¶ 416, aff'd on reconsideration, B-225579.2, June 11, 1987, 87-1 CPD ¶ 584. The standards differ because in procurements using sealed bids, competitive positions are exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. Id. Where, as here, an RFP is not canceled until after the awardee's price has been revealed, the rationale for using the less stringent reasonableness standard does not apply. As discussed below, however, we believe that cancellation of the RFP in this case was justified even under the "cogent and compelling" standard applied to sealed bid procurements.

Section C-1 of the RFP specifies in part that the laser "shall have a burst mode which allows several pulses to be delivered in a short time of 1-6."

Apparently the Army intended through this specification to require that the laser be capable of delivering a range of from one to six "pulses" or "shots" per "burst", at the operator's selection. Since, as Carson agrees, its laser delivers a fixed three-pulse burst, without the capacity for operator adjustment of the number of pulses, the Army determined that the laser offered by Carson failed to meet the burst mode specification as the Army interpreted it.^{1/}

After further consideration, however, the Army later decided that the burst mode specification was ambiguous and did not clearly express the Army's intended meaning. We agree. By referring to "several pulses. . . of 1-6," the specification in our view leaves unclear how many pulses per burst

^{1/} As noted above, the Army initially found that the Carson Laser met all the requirements in the RFP, including the burst mode specification. The record shows that this initial determination was based on the evaluator's view that since the burst mode specification was ambiguous, lasers meeting either interpretation of the specification should be considered acceptable.

were required and whether the number of pulses had to be adjustable by the operator; specifically, although the notation "1-6" implies a full range of pulses from one to six, the imprecise reference to "several pulses" implies that a set number of pulses fewer than six also would be acceptable. The Army's conclusion that the specification is ambiguous is further supported by the variations in the burst mode features of the lasers proposed by the three offerors. As noted above, CooperVision's laser had a fully adjustable range of one to six pulses, while Carson and Coherent, the third offeror, offered lasers with a fixed three-pulse burst.

The variation in the lasers offered also demonstrates that the Army acted properly in canceling the RFP due to the ambiguity of the burst mode specification, since award under the RFP would prejudice the offerors and deprive the government of the full benefits of competition. Specifically, award under the RFP to CooperVision, as the only offeror meeting the Army's interpretation of the burst mode specification, clearly would prejudice Carson, which based its bid on a different but equally reasonable interpretation of the specification. In addition, CooperVision, which offered the adjustable six-pulse burst mode, states that it would have offered its less expensive three-pulse model had it interpreted the specification, as Carson did, not to require either six pulses or the adjustability feature. As a result, the offerors were not competing on a common basis due to the ambiguity of the specification, and the Army did not enjoy the full benefits of competition. Further, it is not clear from the record whether the Army now feels that it needs a laser with a operator adjustable burst mode of between one and six per application. Under these circumstances, the Army was justified in canceling the RFP even after the award price was revealed. See Com-Tron, Inc., B-209235, May 9, 1983, 83-1 CPD ¶ 486.

In view of our conclusion that cancellation was proper due to the ambiguity of the burst mode specification, we need not decide whether, as the Army contends, the spot size specification also was ambiguous, or whether Carson's laser in fact met the RFP specifications. Further, to the extent that Carson argues that the burst mode or spot size specifications, if revised to conform to the Army's intended interpretation, would be unduly restrictive, Carson's challenge is premature since the Army has not yet drafted

the revised specifications. Any objections to the revised specifications can be raised after the new solicitation is issued.

The protest is denied.

for *Seymour Ehas*
James F. Hinchman
General Counsel