

Hearings



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Maico Hearing Instruments, Inc.
File: B-229925
Date: January 15, 1988

DIGEST

1. An allegation that Defense Personnel Support Center acted in bad faith by failing to solicit best and final offers must be supported by virtually irrefutable proof to overcome presumption that contracting official acted in good faith.
2. The General Accounting Office does not conduct investigations as part of its bid protest function to provide support for a protester's allegations.

DECISION

Maico Hearing Instruments, Inc. (MAICO), protests the award of a contract to Tracor Instruments (TRACOR) under solicitation No. DLA120-87-R-2025, issued by the Defense Personnel Support Center (DPSC) for the purchase of screening audiometers with integral electrostatic printers.

MAICO alleges that DPSC acted improperly by accepting TRACOR's offer without first seeking a best and final offer (BAFO) from the offerors.

We dismiss the protest.

BACKGROUND

DPSC's solicitation incorporated the clause from the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.215-16 (1986), which states that the government may award a contract on the basis of initial offers received, without discussion, and warns offerors that each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

DPSC awarded the contract in question to TRACOR on November 30, 1987, on the basis of initial offers submitted by MAICO and TRACOR. TRACOR was the low offeror.

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MAICO alleges that DPSC improperly accepted the initial offer tendered by TRACOR by failing to solicit BAFOs from the offerors. MAICO believes that DPSC is biased in favor of TRACOR, since in a previous contract award (DLA120-87-R-0690) where MAICO made a lower initial offer than TRACOR, DPSC requested BAFOs from the offerors and ultimately accepted TRACOR's lower priced BAFO.

MAICO seeks to have the award to TRACOR rescinded. In addition, MAICO requests an investigation by this Office into DPSC's procurement practices in this matter.

DISCUSSION

A contracting agency may make an award on the basis of initial proposals where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. FAR, 48 C.F.R. § 15.610. See The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 C.P.D. ¶ 660.

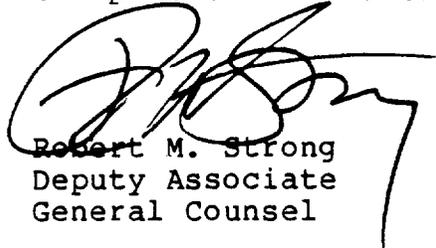
Satisfying the notice requirement, DPSC's solicitation contained a "Contract Award" clause which specifically advised offerors to submit their best prices and also cautioned that award might be based on initial proposals. In addition, MAICO has not shown that DPSC's selection of TRACOR did not result in the lowest overall cost to the government as required by FAR, 48 C.F.R. § 15.610.

MAICO alleges that DPSC acted in bad faith by awarding the contract to TRACOR. The bad faith allegation stems from MAICO's observation that once before, DPSC requested BAFOs from MAICO and TRACOR, this time DPSC did not, and in both cases TRACOR was awarded the contract. Without more, these circumstances fail to satisfy the heavy evidentiary burden carried by the protester in such matters. As we said in Scipar, Inc., B-220645, Feb. 11, 1986, 86-1 C.P.D. ¶ 153:

"Where, as here, a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit virtually irrefutable proof that contracting officials had a specific and malicious intent to harm the protester, since contracting officials are presumed to act in good faith."

Lastly, regarding MAICO's request that this Office investigate the alleged irregularities, we note that we do not conduct investigations pursuant to our bid protest function to provide support for a protester's allegations. See BOW Industries, Inc., B-216512, Apr. 17, 1985, 85-1 C.P.D. ¶ 436.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name and title.

Robert M. Strong
Deputy Associate
General Counsel