Concord

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Concord Electric Company

File: B-230675

Date: May 25, 1988

DIGEST

1. Protest that agency held discussions with the awardee and thus improperly failed to do so with the protester is denied, because the agency's communication with the awardee did not give the firm the opportunity to revise its proposal or to furnish information necessary to evaluate the proposal.

2. Protest that agency was required to notify offerors that an alternate part had been approved for acceptance under the solicitation is denied where offerors should have known that this was a possibility in view of the solicitation's invitation of alternates through the Products Offered clause.

3. An offeror proposing an inflated price in what on its face is a competitive procurement, based on the assumption that there would be no competition, does so at its own risk when the assumption proves to be wrong.

DECISION

Concord Electric Company protests a contract award to Saint Switch, Inc., under Defense Logistics Agency (DLA) request for proposals (RFP) No. 700-88-R-0212, issued to procure lead assembly switches. The protester argues that DLA conducted negotiations with Saint Switch without also negotiating with Concord.

We deny the protest.

The RFP was issued on October 14, 1987, to procure lead assembly switches manufactured in accordance with a specified United States Army Tank Automotive Command (TACOM) technical data package list (TDPL). A major component of

the lead assembly is the switch which, according to the TDPL, must be manufactured in accordance with TACOM drawing No. 7973708. The drawing specifies only Micro Switch Part No. 10B12 as approved. The RFP, however, also specifically applied the Products Offered clause to the switch, under which a firm could offer an alternate switch that is functionally, mechanically, physically and electrically interchangeable with the specified part if the offeror submitted sufficient evidence in that respect. The contract was to be awarded to the responsible offeror that submitted the conforming offer most advantageous to the government, cost or price and other factors specified elsewhere in the solicitation considered.

Fourteen offerors responded to the RFP. Saint Switch submitted the lowest-priced offer at $36.78 per assembly, and Concord submitted the fifth low offer at $55.00 per assembly. Saint Switch offered an alternate part for the switch, which it identified in its offer by putting its own part number in the space on the schedule labeled "Manufacturer's part number." Saint Switch also submitted with its offer a letter from TACOM dated September 9, 1987, establishing that TACOM had tested the Saint Switch part, found it equal to the specified Micro Switch part, and was in the process of adding the Saint Switch part number to the drawing.

The contracting officer submitted the Saint Switch offer to DLA's technical operations unit for evaluation. The technician, unaware that the RFP solicited alternate switches only and not alternate assemblies, then contacted Saint Switch to ensure that Saint Switch was offering the entire assembly as opposed to the switch only; in response, Saint Switch verified that its offer was for the whole assembly, and that the TACOM letter applied only to its switch. On November 23, the technician approved the Saint Switch part as an acceptable alternate switch. The contract was awarded to Saint Switch based, in DLA's view, on the evaluation of the initial proposals.

Concord asserts that in approving the Saint Switch part DLA held discussions with Saint Switch concerning the acceptbility of its proposal, and the agency therefore also was required to hold discussions with Concord. Concord further contends that before the contract was awarded to Saint Switch, DLA should have notified Concord that the Saint Switch part had been approved, and provided Concord with the opportunity to submit a best and final offer, because, according to Concord, if it had known of the additional competition it would have lowered its price.

Under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985), and Federal Acquisition Regulation (FAR) § 15.610(a)(3) (FAC 84-16), an agency may award a contract on the basis of initial proposals without holding discussions if the solicitation advises offerors of that possibility, no discussions in fact are held, and the competition or prior cost experience clearly demonstrates that the acceptance of initial proposals will result in the lowest overall cost to the government. Once an agency holds discussions with any offeror, however, it must do so with all offerors in the competitive range. FAR § 15.610(b). On the other hand, an agency may permit an offeror to clarify an otherwise acceptable offer without holding discussions with the other offerors. See Keystone Engineering Co., B-228026, Nov. 5, 1987, 87-2 CPD ¶ 449.

Discussions encompass any oral or written communications between the government and an offeror that solicit information essential for determining if a proposal is acceptable or which provide the offeror the opportunity to modify its proposal. Keystone Engineering Co., B-228026, supra. We find that the DLA technician's communication with Saint Switch did not constitute discussions under that standard and, therefore, DLA was not required to hold discussions with Concord. Saint Switch was not granted an opportunity to, and did not attempt to, revise its proposal. Further, the information that was requested from Saint Switch--essentially confirmation of something already reasonably evident from the company's offer--was not necessary to determine if the firm's proposal was acceptable. In this regard, we have reviewed Saint Switch's proposal and it is clear that the firm was offering the assembly and not just the switch. This protest basis therefore is denied.

We also do not agree with Concord that DLA was required to inform offerors that the Saint Switch part was approved as an alternate, and then provide offerors with the opportunity to submit revised proposals. In accepting Saint Switch's alternate part, DLA neither changed the requirements of the RFP as issued nor accepted a proposal that deviated from those requirements. See FAR § 15.606. Moreover, as stated above, the RFP, through the Products Offered clause, specifically permitted DLA to accept an acceptable alternate switch if the offeror of the part demonstrated that the alternate had been approved; we do not think DLA was under any obligation otherwise to inform Concord that full and open competition was being or had been obtained. To the extent Concord argues that it would have lowered its price if it had known that a competitor had offered an alternate switch, it has been our view that, while we are well aware

of the realities of the marketplace, an offeror proposing an inflated price in what on its face is a competitive procurement, based on the assumption that there would be no competition, does so at its own risk when the assumption proves to be wrong. DataVault Corp., B-223937, et al., Nov. 20, 1986, 86-2 CPD ¶ 594.

The protest is denied.

James F. Hinchman
General Counsel