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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allen Organ Company

File: B-230268

Date: June 14, 1988

DIGEST

Protest is sustained where contracting agency awarded a contract for an item that did not meet the requirements stated in the solicitation.

DECISION

Allen Organ Company protests a contract award to Rodgers Organ Company under Department of the Army request for proposals (RFP) No. DAAC09-88-R-0279 for a digital electronic organ. Allen argues that the Army accepted an offer that did not meet the RFP's requirements.

We sustain the protest.

The solicitation requested an organ with specified features, to be installed at the Army base in Seoul Korea, and provided that the contract would be awarded to the responsible offeror that submitted the lowest priced, technically acceptable offer. The Army received three offers and, after a technical evaluation, included those of Rodgers and Allen in the competitive range and requested both firms to submit best and final offers (BAFOs). The costs proposed by Allen and Rodgers in their BAFOs were \$28,122 and \$25,700, respectively, and the Army awarded the contract to Rodgers.

Allen protests that the Rodgers organ does not meet the RFP requirements for programmable stops via a card reader or floppy disk, and for plug-in circuit board construction. Allen also asserts that the required maintenance kit offered by Rodgers does not comply with the RFP because it does not contain one replacement board for each of the organ's circuit boards. Allen asserts that if it had omitted the

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card reader from its offer, and had included in its maintenance kit only one replacement circuit board, its price would have decreased so that it would have been the low offeror entitled to the contract award.

The Army reports that the purpose of requiring programmable stops via a floppy disk or card reader is to make the organ capable of playing new sounds that are not part of the organ's standard sounds. The Army argues that Rodgers' offer complies with this requirement because, while the organ does not have programmable stops via a floppy disk or card reader, it is capable of adding new sounds via a "stop tab." In addition, the Army states, Rodgers has represented that new sounds can be added to the organ by opening the back of the organ and making some adjustments.

The Army next asserts that the purpose of requiring plug-in circuit board construction is to ensure less down time and more efficient service. The Army states that Rodgers' organ meets the agency's requirement because Rogers' most critical board, the microprocessor control board, is plug-in, and points out that the solicitation did not require that all the organ's circuit boards be plug-in.

Finally, the Army states that Rodgers has offered a maintenance kit which includes a replacement board for the plug-in microprocessor control board, and standard replacement parts and technical information needed to repair and maintain the non-plug-in circuit boards. Rodgers also has indicated that maintenance support will be available through a Korean firm with which Rodgers is affiliated. The Army contends that this maintenance kit is sufficient and that Rodgers was not required to include a replacement board for each of its circuit boards because the design of Rodgers' organ is not based on plug-in circuit boards.

Allen replies that the stop tabs featured on Rodgers' organ can change the volume of sounds already in the organ but are not capable of adding new sounds to the organ; Allen argues that the stop tabs therefore are not acceptable alternates to the card reader or floppy disk. Allen further asserts that the fact that new sounds can be added to Rodgers' organ by opening the back and adjusting the organ is not sufficient because the process is complicated and requires a trained technician and major modification of the organ's circuitry. Allen also disputes that the RFP does not require all the circuit boards to be plug-in and that the Army properly waived for Rodgers the requirement that the maintenance kit include a replacement for each circuit board.

It is a fundamental principle of competitive procurement that offerors be provided with a common basis for the submission of proposals, and that their proposals are evaluated on that common basis. E. C. Campbell, Inc., B-222197, June 19, 1986, 86-1 CPD ¶ 565. Our review of the protest record here, however, discloses that the stop tabs on the Rodgers organ do not provide the same function as a card reader or floppy disk. Our understanding of the instrument is that, as Allen explains, the stop tabs do not permit the addition of new sounds to the organ, but basically affect volume; in fact, Rodgers has confirmed that the organ needs to be opened to add new sounds. Also, we do not think that Rodgers' organ can be viewed as satisfying the solicitation requirement that the organ be of "plug-in circuit board construction," since only one out of a number of the organ's circuit boards is plug-in. Finally, Rodgers' maintenance kit does not include a replacement board for each circuit board (only for the plug-in microprocessor control board). Thus, while it may be, as the Army states, that the organ offered by Rodgers meets the Army's needs, the fact is that the organ does not comply with the requirements of the RFP.

It is not clear, however, whether Allen actually was prejudiced in the competition by the Army's acceptance of Rodgers' offer. While it appears that had Allen been given the chance it could have eliminated the card reader (at \$2,325) and still furnished the same function provided by Rodgers' stop tabs, because of the design of Allen's organ--the instrument includes various plug-in boards--the firm still would have needed to furnish a maintenance kit with a replacement for each plug-in circuit board. This would have left Allen's offer \$97 higher than Rodgers' offer. In this respect, Allen does not argue that it has available an organ with Rodgers' design, that is, one that might not meet all RFP requirements but still would fulfill the Army's needs. On the other hand, it is not at all clear from Rodgers' offer that Rodgers' proposed price included the cost of any repair service needed from the firm's Korean affiliate. Thus, the Army may not have considered all the costs to the government in evaluating Rodgers' proposal.

Given these factors, we cannot tell which of the two offers was lower in cost and thus entitled to the award. In any event, the Rodgers organ was shipped shortly before Allen protested to our Office, so that corrective action is impracticable at this time. In these circumstances, we find that Allen is entitled to the cost of pursuing this protest

and the cost of submitting its proposal. 4 C.F.R. § 21.6(d) (1988). Allen should submit a claim for such costs directly to the Army. 4 C.F.R. § 21.6(e).

The protest is sustained.

for 
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