



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Teledyne CME--Request for Reconsideration

File: B-228368.3

Date: June 20, 1988

DIGEST

Prior decision is affirmed where protester fails to show any basis that would warrant reversal or modification of our prior decision dismissing as academic protest against solicitation terms on grounds that firm would not be eligible for award even if protest was sustained. The record shows that the protester was not the low offeror after the third round of best and final offers (BAFOs) that the protested terms had no material impact on price, and that the agency had a valid reason to request a third round of BAFOs.

DECISION

Teledyne CME requests that we reconsider our decision in Teledyne CME--Request for Reconsideration, B-228368.2, Mar. 21, 1988, 88-1 CPD ¶ 291. In that decision, we dismissed Teledyne's protest against allegedly restrictive solicitation terms as academic on grounds that the firm would not be eligible for award even if we were to sustain its protest, since it submitted an offer which was not low and the allegedly restrictive terms had no material impact on its price. We concluded that the solicitation terms which Teledyne had protested had not prejudiced the firm in terms of price because its best and final offer (BAFO) did not incorporate the allegedly objectionable terms and yet was still not low. In its request for reconsideration, Teledyne now argues that the agency should have made award to it under a previous round of BAFOs because at the time it was the low, technically acceptable offeror. We find this contention without merit.

On February 23, 1987, the Department of the Navy issued request for proposals (RFP) No. N00123-87-R-0544 for the acquisition of 45 traveling wave tube amplifiers (TWTAs) with proposed options for an additional quantity of 67 TWTAs. Initial offers were due on April 9, and two firms--Teledyne and ITT Corporation--submitted offers by

040499/136138

that date.^{1/} Thereafter, proposals were evaluated and by letter dated June 8, BAFOs were requested to be submitted by June 19. In its June 8 letter to ITT, the Navy stated that the firm's proposal contained no technical deficiencies but offered prices which the Navy considered significantly high. The Navy's June 8 letter to Teledyne makes no mention of price but identified various technical deficiencies found in the firm's proposal. In addition, by letters dated June 17, the Navy requested that both firms submit alternate offers based upon different quantities. On June 19, both firms submitted BAFOs as well as the requested alternate offers.

After the evaluation of BAFOs, the Navy again concluded that ITT's proposal contained unreasonably high prices and that Teledyne's proposal contained various technical deficiencies. Accordingly, discussions were held (with ITT on the subject of price and with Teledyne regarding the technical deficiencies) and a second round of BAFOs, including alternate offers, were solicited and submitted. After evaluation of the second BAFOs, the agency concluded that ITT had offered a reasonable price and that Teledyne's proposal was technically acceptable. Accordingly, the Navy resolved to make award to the lowest offeror. In this connection the agency concluded that Teledyne's alternate offer did not include the price for its first article for each of the two CLINs.

The Navy therefore prepared a business clearance memorandum requesting approval from the Contract Review Board for award to ITT under its alternate offer, because with the cost of a first article added to Teledyne's alternate offer that offer would not be low. The Contract Review Board declined to approve the business clearance memorandum on grounds that the request for alternate offers failed to properly instruct offerors regarding the submission of first article prices and because of a suspected error in Teledyne's price for one of the subCLINs under its original offer.

Subsequent to the above-described course of events, but before a clarification of the alternate offers could be sought, the contracting activity learned that funds had become available for the entire quantity solicited under the original RFP (i.e., basic quantity plus options) and that there was an apparent mistake in the RFP delivery schedule. Accordingly, the contracting activity issued an amendment

^{1/} The original closing date had been extended at the request of the offerors. Teledyne's rationale for requesting an extension was that the firm had developed an alternate technical approach which it wished to offer to the Navy.

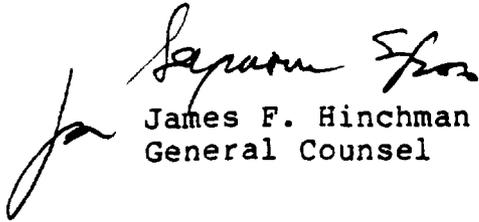
which deleted all option CLINs and added a like number of units to the basic quantity, changed the terms of the delivery schedule and added a liquidated damages clause to the RFP. Thereafter, both firms submitted BAFOs by the September 23 closing date and a contract was subsequently awarded to ITT as the lowest priced, technically conforming offeror. It was the terms of this final amendment (specifically the revised delivery schedule) which formed the basis of Teledyne's original protest.

As noted above, we dismissed Teledyne's protest as academic on grounds that the firm had not been the low technically conforming offeror under the last round of BAFOs and had failed to show that the terms of the final amendment had adversely affected its offer in terms of price. On reconsideration, Teledyne does not contest our conclusion, but now argues that award should have been made to it on the basis of its alternate offer submitted pursuant to the second request for BAFOs. In particular, the firm argues that it had chosen to amortize the costs of its first articles over the entire quantity solicited under the request for alternate offers and that the agency erred in not concluding that Teledyne had submitted the low technically conforming offer. Thus, the protester argues that the final amendment and request for BAFOs were improper.

While Teledyne's alternate offer under the second round of BAFOs may have been the low, technically conforming offer and in line for award at the time, we cannot agree that Teledyne should have been awarded the contract since we conclude that the agency had valid reasons for requesting another round of BAFOs. First, the record shows that there was an ambiguity requiring discussions regarding the pricing of first article requirements under the request for alternate proposals and under Teledyne's offer which, in itself, would have justified the further request for BAFOs. See Corporate America Research Associates, Inc., B-228579, Feb. 17, 1988, 88-1 CPD ¶ 160.

Second, the agency's needs changed with respect to basic quantities and options. The Federal Acquisition Regulation (FAR) § 15.606(a) (FAC 84-16) states that when there is a change in the government's requirements either before or after the receipt of proposals, an amendment shall be issued. One proper basis for the issuance of an amendment is a significant change in the government's requirements as to quantity. See FAR § 15.606(a) (FAC 84-16); see also Pacer Systems, Inc., B-215999, Dec. 10, 1984, 84-2 CPD ¶ 645. Thus, the Navy's quantity requirements was a proper basis for the issuance of the amendment which justified the final round of BAFOs.

Accordingly, we cannot conclude that our original decision dismissing Teledyne's protest as academic was improper since, contrary to Teledyne's assertion, the further request for BAFOs was justified. The decision is affirmed.

James F. Hinchman
General Counsel