



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pacific Scientific Company

File: B-231175

Date: August 30, 1988

DIGEST

1. Where Commerce Business Daily synopsis of proposed sole-source award based on one manufacturer's part number generated interest from offerors of equivalent alternate parts, and agency then found one of these offerors to be acceptable, agency should have issued solicitation under competitive procedures instead of using sole-source purchase order as solicitation; protester, the proposed sole-source, was not prejudiced by agency's failure to do so, however, since there is no evidence or reason to believe protester would have offered other than its own part.

2. Where solicitation does not call for technical proposal in any particular form or detail, a brief telegraphic offer by an unapproved source referencing proposed sole-source part number reasonably can be interpreted as a general offer to meet the requirement; offeror's clarification during subsequent source approval process that it is offering its own part thus does not constitute a material proposal modification that could necessitate holding discussions with all offerors.

DECISION

Pacific Scientific Company (PSC) protests the award of a contract to H. Koch & Sons, pursuant to request for proposals (RFP) No. F41608-87-R-0685, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for aircraft strap assemblies used in pilot safety restraint systems. PSC principally argues that the Air Force improperly permitted Koch to modify its initial proposal without affording PSC an opportunity to submit a best and final offer (BAFO), and that award improperly was made on the basis of a part number not referenced in the RFP.

We deny the protest.

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The Air Force initiated the acquisition of the strap assemblies as a sole-source procurement from the only known approved source, PSC. Pursuant to the Competition in Contracting Act (CICA), 10 U.S.C. § 2304(c)(1) (Supp. IV 1986), the agency published a synopsis in the Commerce Business Daily (CBD) to serve notice of its intention to obtain the items from PSC (whose part number it referenced). The agency then issued as an RFP the proposed sole-source purchase request that was to be placed against PSC's existing basic ordering agreement. In response to the CBD notice, several firms requested the solicitation, and the agency received proposals from Koch and PSC. Koch's offer was in telegraphic form, as authorized by the RFP; both proposals referenced the part number indicated in the RFP.

Koch's price was significantly lower than PSC's (\$19.50 per item compared to \$35.20), and the Air Force determined that time permitted a reasonable effort to qualify Koch as a source for the part. In the course of the source approval process, Koch indicated it was offering its own part number for the strap assembly. Upon approval of Koch as a source, the Air Force determined that Koch's price was so far below PSC's, based both on PSC's current offer and on its price under a prior procurement, that the competitive range consisted only of Koch; since the RFP provided for award on initial proposals, the agency made award to the firm as the low, technically acceptable, responsible offeror.

PSC protests that the Air Force improperly allowed Koch to modify its initial proposal that referenced PSC's part number to incorporate its own entirely different part number without allowing PSC to submit a BAFO, and that the award was improperly based on Koch's part number rather than the PSC part referenced in the solicitation.

In order to achieve the objective under CICA of full and open competition, an agency must consider all offers received in response to a synopsis of a proposed sole-source award, before making the proposed award. See World-Wide Security Service, Inc.; Phillips Electronics Instruments, Inc., B-224277, 224277.2, Jan. 8, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 35. An offeror may not be excluded from consideration for award merely because it is not an approved source. Pacific Sky Supply, Inc., B-225513, Mar. 30, 1987, 87-1 CPD ¶ 358. Rather, where time permits, an offeror must be given an opportunity to demonstrate that its product meets the standards established for qualification. See Defense Procurement Reform Act of 1984, 10 U.S.C. § 2319(b) (Supp. IV 1986); id.

The Air Force complied with these requirements by synopsis-ing the proposed sole-source award in the CBD, accepting proposals from alternate sources, and then evaluating Koch for source approval.

The Air Force did not, however, comply with certain other regulatory requirements. Under Federal Acquisition Regulation (FAR) § 15.402(h) (FAC 84-37), when an agency, in considering responses to a CBD notice of a proposal sole-source award, determines that more than one source can meet its needs, the agency must then solicit offers using competitive procedures. Therefore, the Air Force, upon determining that Koch could be approved as an alternate source for this procurement, should have issued a competi-tive solicitation.

Although the Air Force did not do so, we do not think this deficiency rendered the award to Koch improper, since Koch's participation in the procurement promoted competition as contemplated by CICA, and it is not clear how PSC was prejudiced by the deficiency; PSC does not argue, and there is no reason to believe, that PSC, the manufacturer of the synopsised part, would have offered a different item had the solicitation indicated that alternate parts would be considered.

Finally, we do not agree that permitting Koch to clarify that it was offering its own part to meet the requirement constituted discussions, necessitating discussions with PSC (or a BAFO request). The solicitation did not specify any particular form or detail for proposals, and Koch's brief initial telegraphic proposal, we think, reasonably can be read as a general offer to meet the requirement. The Air Force apparently read the proposal in this manner, as it set out to evaluate Koch for source approval based on its own part. In any case, again, PSC was not prejudiced by Koch's clarification. As indicated above, there is no reason to believe PSC would have offered a different part in a BAFO, and since the RFP advised that award might be made on an initial proposal basis, and that offerors thus should offer their most favorable prices, there also is no reason to believe, and PSC does not assert, that PSC would have significantly lowered its price, which was approximately 80 percent higher than Koch's.

The protest is denied.

 *James F. Hinchman*
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