



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Machinery and Equipment, Inc.--
Reconsideration

File: B-230721.2

Date: October 19, 1988

DIGEST

1. A firm whose proposal was found technically unacceptable and therefore was passed over for award in favor of a higher-priced offer is an interested party to protest the agency's decision with respect to its own proposal, regardless of whether there was a lower-priced offer of the same brand where the lower-priced offer's acceptability is challenged, and that offeror no longer evidences any interest in the award.

2. Exclusion of initial proposal from the competitive range is proper where the offeror does not furnish descriptive literature expressly required for proposal evaluation but instead only writes "we comply" next to various specifications, and the agency's evaluator reasonably concludes, based on his knowledge of the particular model offered, that it does not meet certain necessary specifications.

DECISION

Discount Machinery and Equipment, Inc., requests that we reconsider our decision dismissing its protest of the rejection of the proposal it submitted in response to Department of the Navy request for proposals (RFP) No. N00600-88-R-0330. We dismissed the protest because we found that Discount was not an interested party. Discount Machinery & Equipment, Inc., B-231721, June 9, 1988, 88-1 CPD ¶ 550.

On reconsideration, we have decided to review the matter on its merits, but we deny the protest.

The procurement was for a hydraulic metal squaring shear. In its initial protest, Discount argued that its proposal was rejected for deficiencies that were not indicated in the Navy's request for best and final offers (BAFOs), and that

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the proposal did in fact meet the specifications. The Navy responded that not only did it believe that Discount's offer of a Betenbender Manufacturing Company shear did not meet the specifications, but that even if it had met them a competitor, Don G. Jenness Co., Inc., submitted a lower offer for the same shear and therefore would have received the award had the offer been found technically acceptable. The Navy argued that Discount therefore was not an interested party to bring the protest under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a), 21.1(a) (1988). In our original decision, we agreed with the Navy that Discount was not an interested party.

On reconsideration, we are now persuaded that we should consider the merits of Discount's protest. It is generally true that an offeror who is not next in line for award is not an interested party under our Regulations, since the firm lacks the requisite direct economic interest in the outcome of the protest. Here, however, Discount also has challenged the acceptability of Jenness's offer, and there is no indication in the record that Jenness is still interested in the award. In these circumstances, we think that Discount, having been passed over for an award on the basis of technical acceptability in favor of award to a higher-priced offeror, ought to be heard to complain about the agency's decision with respect to its own offer, irrespective of the fact that there was a lower-priced offer of the same brand item.

As to the merits of the protest, an offeror under the RFP was to certify that the item it was offering was a current production model, and to furnish descriptive literature substantiating that fact; the literature was to include details of the product offered "pertinent to the design, construction, operation, materials, components, capacities, and performance characteristics, and accessories." Offerors were advised that the only acceptable literature was manufacturer's published brochures, "as built" engineering drawings and associated parts lists, and published technical manuals. Firms were cautioned both that failure to comply with the descriptive literature instructions would result in rejection of an offer, and that an offer that did not include enough information to permit evaluation might be rejected. Award in the procurement was to be made to the lowest priced technically acceptable offeror.

The record shows that Discount was one of five offerors in the competitive range, based on the evaluation of initial proposals. In its initial offer, Discount certified in a number of places that the Betenbender shear it was offering in fact was a current production model. Also, Discount

wrote "we comply" in the RFP margins next to the specifications for the gap-type end housing and the ball transfer arrangement. Discount, however, did not comply with the RFP requirement for descriptive literature to substantiate that the item proposed was a current production model although the firm wrote next to the descriptive literature clause, "we are taking no exception."

Discount's proposal was rated unacceptable but susceptible to being made acceptable because of the Navy evaluator's concern about the electrical system, and the firm was so advised in the request for a BAFO. Upon reviewing Discount's BAFO, however, which addressed the electrical system issue, the same evaluator decided that the initial offer should have been rejected as totally unacceptable and Discount's participation in the procurement ended at the outset. The reason for that assessment was that the Betenbender shear that Discount offered did not comply in all respects with Military Specifications MIL-P-80086D, specifically the requirements for (1) a gap-end type housing; (2) a shear table of stated design; and (3) a staggered ball transfer pattern.

The evaluator concluded, based on his knowledge of the Betenbender product line and of the model that Discount offered, that the deficiencies were of a magnitude that precluded correction by discussions, especially since he understood that Betenbender had no current production model with those features, as required by the RFP. On that basis, the Navy rejected Discount's BAFO as technically unacceptable.

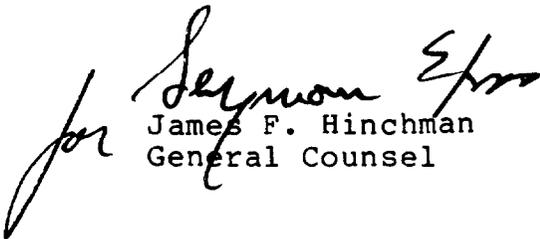
Discount contends that the Betenbender shear meets all the noted requirements. The firm further argues that to the extent the Navy was concerned with the offer in the cited respects it was unfair to reject the proposal without giving Discount the chance to explain it or otherwise address the Navy's problems. Discount asserts that it has supplied the identically configured machine to other military agencies under other solicitations and, in further support of its protest, has explained and clarified the Betenbender shear's dimensions and capabilities.

We agree with the Navy that the agency was justified in rejecting Discount's BAFO because the government should have rejected the initial offer. In this respect, we do not think it relevant to the propriety of the rejection that the error in evaluating the initial proposal was not discovered until near the end of the procurement if the offer in fact was unacceptable as submitted. It is the offeror's duty to include information in its proposal to establish that the

equipment offered will meet the RFP's requirements, Johnston Communications, B-221346, Feb. 28, 1986, 86-1 CPD ¶ 211, and blanket statements of compliance do not fulfill that duty. See AZTEK, B-229525, Mar. 2, 1988, 88-1 CPD ¶ 218; AZTEK, Inc., B-228376, Feb. 5, 1988, 88-1 CPD ¶ 113. Accordingly, Discount's writing "we comply" next to various specifications in the initial proposal was not an adequate substitute for the submission of the type of literature that offerors were expressly cautioned was needed for proposal evaluation.

Moreover, we have no reason to question the Navy evaluator's determination, based on his knowledge of Betenbender products and without benefit of literature showing otherwise, that the model of shear Discount offered was unacceptable for the reasons cited. Discount, by failing to furnish the required descriptive literature with its initial proposal, clearly took just that chance, that is, that the offer would be rejected without further consideration. The fact that the subject shear may have been found acceptable in other procurements does not excuse the failure to satisfy the requirements in this one, since each procurement stands alone in that regard. Discount Machinery & Equipment, Inc., B-230567, May 2, 1988, 88-1 CPD ¶ 422.

The protest is denied.

for
James F. Hinchman
General Counsel