

Ruppert



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Trittech Field Engineering

File: B-233357

Date: February 27, 1989

DIGEST

1. Award to an offeror submitting an "all or none" proposal of maintenance services for eight categories of laboratory equipment is proper since solicitation did not preclude "all or none" offers and the only other technically acceptable firm offered to perform only three of the required eight items; therefore, the best interests of the government required an award to the "all or none" offeror, even though at a higher price for the three items offered by the other.

2. Consideration of best and final offer (BAFO) which contained an "all or none" qualification is not precluded as a late modification of proposal where it was received before the closing date for receipt of BAFOs.

DECISION

Trittech Field Engineering protests the rejection of its low, technically acceptable offer for items 1, 2 and 4, and the award of a contract to Beckman Instruments, Inc., under request for proposals (RFP) No. 263-88-P(85)-0052, issued by the National Institutes of Health (NIH) to provide preventive maintenance, inspection, and emergency repair of NIH owned/leased Beckman instruments. The protester contends that the government improperly made an award to Beckman based on what the agency incorrectly read as an "all or none" offer, and that doing so prevented Trittech from receiving contracts for the line items on which it submitted the low price. We deny the protest.

The request for proposals called for the acquisition of maintenance services for eight general categories of laboratory equipment. Within the eight categories, offerors were instructed to provide a fixed price for a single maintenance call on each separate instrument, in anticipation of the award of a requirements contract for the

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services. The RFP provided that offerors could propose on one item or all items, and that award could be made in the aggregate, or by item or combination of items.

Proposals were received from three offerors by the April 1, 1988, due date. The technical evaluation panel reviewed the proposals and determined that only Trittech and Beckman were within the competitive range. Trittech submitted its offer based upon providing maintenance only on items 1, 2 and 4 (out of the 8 items listed), and was the low offeror on those items. Beckman proposed maintenance on all items. Beckman's initial proposal contained the following statements regarding its pricing:

"The 1988 Service Agreement price list is included. Prices quoted under the terms include 20% discount for N.I.H. owned or leased Beckman instruments; and

"The 20% discount offered in the proposal is contingent upon Beckman being the sole source contractor for all N.I.H. owned/leased Beckman instruments that are contracted for service."

Negotiations were conducted with both Trittech and Beckman, and each offeror was requested to submit a best and final offer (BAFO) by 3 p.m. on July 29. In an attempt to clarify the apparent qualifying language in its initial proposal, NIH asked Beckman to provide BAFO prices based on:

- (1) Beckman's receiving a contract for all eight items, and
- (2) Beckman's receiving a contract for fewer than eight items.

At the same time, Trittech was requested to discuss which, if any, of items 3, 5, 6, 7 and 8 it would be able and willing to maintain under a full service agreement, and to give prices for those items.

Trittech's BAFO made no mention of additional items and was limited to the same items and prices offered in the firm's initial proposal. Beckman's BAFO was qualified by the following statement:

"We cannot propose best and final offer prices on Beckman receiving a contract for fewer than eight items for the following reasons. Many labs at NIH have multiple Beckman instruments manufactured by several of our divisions. If we were not to propose one or two products our reputation would be adversely affected. The implication would be that Beckman Instruments is in the process of phasing out the products deleted from the Service Agreement, and will no longer provide technical

support. This would create confusion beyond our capacity to remedy, and could limit or negate future sales of those products not proposed."

NIH read this statement as an "all or none" qualification. Because NIH considered the services for all eight items critical to NIH research, the agency determined that it was in the best interest of the government to award a contract in the aggregate to Beckman; only in this way could the entire requirement be met. Therefore, Beckman was selected for award of all eight items.

Where a solicitation permits multiple awards and does not expressly prohibit "all or none" or similarly restricted offers, an offeror may properly condition award on receipt of all or a specified group of items. See Quantic Industries, Inc., 66 Comp. Gen. 106 (1986), 86-2 CPD ¶ 628. Since Tritech offered only certain items, if Beckman's proposal was submitted on an "all or none" basis, the agency properly made award to that firm as the only way to have its entire requirement satisfied.

Tritech argues that neither Beckman's initial offer nor its BAFO imposed an "all or none" qualification and that, even if Beckman's BAFO is considered to be an "all or none" offer, it was not acceptable because it was submitted after the proposal deadline. Tritech concludes that it should have received an award for the three items on which it was the low offeror.

We agree that Beckman's initial proposal did not contain an "all or none" qualification; it conditioned the 20 percent discount on a full award, but did not state that Beckman would not consider an award for fewer than all eight items. However, the absence of on all "all or none" qualification from Beckman's initial proposal is not determinative, since we read Beckman's BAFO as clearly setting forth such a qualification.

Although Tritech argues to the contrary, we think the plain import of the quoted statement from Beckman's BAFO is that the firm was not offering perform less than all of the requirement. Particularly persuasive in this regard is the statement that the firm "cannot propose best and final offer prices on Beckman receiving a contract for fewer than eight items. . . . If we were not to propose on one or two products, our reputation would be adversely affected." Unlike the firm's initial proposal, this language did not merely indicate that the 20 percent discount would not apply in the case of multiple awards; indeed, the BAFO statement nowhere mentions the discount. Thus, although the BAFO does

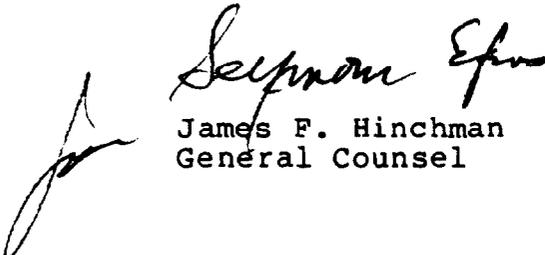
not include the term "all or none," we conclude that it was clear from the language used that this was Beckman's intent.

Tritech's argument that Beckman's BAFO of July 28 should not have been considered because it was submitted late is based on a misunderstanding of the negotiated procurement procedures. Tritech asserts that Beckman's BAFO was late because it was not submitted by 3 p.m. on April 1, the deadline specified in the RFP for the submission of proposals and modifications. However, April 1 was only the closing date for submission of initial proposals and any modifications an offeror desired to include in its initial proposal. This initial closing date did not apply to BAFOs submitted after discussions. Rather, under Federal Acquisition Regulation § 15.611, after negotiations have been conducted, all offerors still in the competitive range must be given a chance to submit a BAFO by a common cutoff date. Here, the cutoff was July 29, and the record indicates Beckman's BAFO was received by that date.

We conclude that since Beckman's proposal contained an "all or none" qualification, and an award to Tritech for a limited number of items would not satisfy NIH's entire requirement, the award to Beckman for all items was proper.

Tritech requests reimbursement of the costs it incurred in preparing its offer and in pursuing the protest. There is no basis for recovery of these costs where, as here, we find a protest to be without merit. See Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181.

The protest is denied.



James F. Hinchman
General Counsel