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Comptroller General
of the United States

Washington, D.C. 20543

Decision

Matter of: United Equipment, Inc.

File: B-245235

Date: December 26, 1991

John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for the protester.

Niketa L. Wharton, Esq., and Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The contracting officer, in a negotiated procurement for a source approved product, reasonably determined that award to the low-priced offeror on the basis of initial proposals would result in the actual lowest overall cost to the government where the majority of the prices received in the procurement were less than the award price for the item in the prior procurement and where the agency was not aware, nor did the higher-priced protester make the agency aware, that certain changes to the protester's offered product, made to obtain source approval after submission of initial proposals, might result in a lower cost to the government.

DECISION

United Equipment, Inc. protests the award of a contract to Perkins Plastics, Inc. under request for proposals (RFP) No. DIA400-91-R-1557, issued by the Defense General Supply Center, Defense Logistics Agency (DLA), for aircraft window panels. United argues that DLA's award to Perkins based on initial proposals was unreasonable because the award may not have resulted in the lowest cost to the government.

We deny the protest.

The RFP, issued on March 11, 1991, sought the supply of aircraft window panels, identified by National Stock Number (NSN) 1560-00-132-4985. The RFP contained the standard

"Products Offered" clause, as set forth in Defense Logistics Acquisition Regulation § 52.217-9002, which provided that the manufacturer's products described in the RFP's acquisition identification description (AID) had been determined to be acceptable and which permitted offerors to propose alternate products. Under that clause, offerors proposing alternate items were required to furnish sufficient information to allow the agency to determine the acceptability of the alternate items. The AID provided that the window panels of Bell Helicopter Corp., Perkins, and Heli-Plex, Inc. were approved, and further provided that offered alternate products must meet the requirements of Bell Drawing 206-032-501 Rev. N, dated May 28, 1985.

The RFP contemplated award to the low priced, technically acceptable offeror, and offerors were requested to provide their prices for incremental, alternate quantities of panels. Offerors were also informed that award could be made on the basis of initial proposals without discussions.

On April 11, 1991, DLA received proposals from four offerors, including Perkins and United. United was the only offeror to propose an alternate product. Perkins was the low offeror, while United was the second low offeror.¹

In accordance with the RFP requirements, United provided a technical data package for its alternate product, which DLA submitted to the engineering support activity (ESA) for the item. The ESA informed DLA that United's product met the specifications but found that United's product did not allow for the variability in the dimensions that exist in the openings where the aircraft window panels will be fitted. Thus, the ESA requested United to provide an additional one-eighth of an inch of material around the window panel to "allow for installation of the window in doors that are at the wide end of the variation and any excess can easily be trimmed for fit as required." United revised its technical data package and on June 24, the ESA found that United's revised alternate product was acceptable and informed DLA that the purchase of United's product should be made against United's revised technical drawing.

On August 7, DLA made award to Perkins on the basis of initial proposals without discussions. This protest followed on August 20. Performance of the contract has been suspended pending our decision in the matter.

¹The agency's report and competitors' prices were disclosed only to counsel for the protester under a protective order issued by our Office.

The crux of United's arguments is that DLA improperly awarded a contract to Perkins on the basis of initial proposals. United asserts that the agency could not be reasonably certain that award without discussions would result in the lowest overall cost to the government because the addition of window material allowed United to relax the panel's dimensional tolerances. This relaxation is indicated on United's revised drawing, and United asserts that it reduced its manufacturing costs.

Under the provisions of the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(A)(ii) (1988), applicable to this procurement, a procuring agency may award a contract on the basis of initial proposals, that is, without holding discussions, if the solicitation advised offerors of that possibility and the competition or prior cost experience clearly demonstrate that acceptance of an initial proposal would result in the lowest overall cost to the government.² Kinton, Inc., 67 Comp. Gen. 226 (1988), 88-1 CPD ¶ 112.

The RFP advised offerors that award might be made on the basis of initial proposals. The agency received 4 technically acceptable offers, of which 3 offers were lower than the award price for the window panels in 1990.³ On the basis of the prior cost experience and the competition received in this procurement, the contracting officer concluded that acceptance of Perkins' initial offer would result in the lowest overall cost to the government.

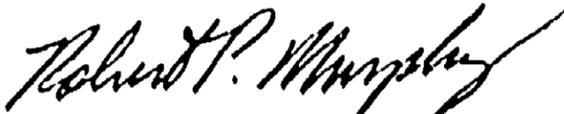
While United argues that the agency knew or should have known that the revision of its window panel, which was made in order to receive source approval, reduced its manufacturing costs, the agency denies any such knowledge. United never informed the agency, in the more than a month period following the revision of its product, that this revision lowered its manufacturing costs. Given the prior cost history of this item, which reasonably indicates that

²This requirement was rescinded for solicitations issued after April 4, 1991, for agencies covered by Title 10 of the United States Code. See The National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 802(d)(3)(A), 104 Stat. 1485, 1589 (1990), amending 10 U.S.C. § 2305(b)(4)(A).

³The fourth offeror offered the same unit price as was awarded in 1990.

Perkins' offer represented the lowest overall cost, we have no basis to object to the initial proposal award.

The protest is denied.


for James F. Hinchman
General Counsel