



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ranor, Inc.

File: B-255904

Date: April 14, 1994

Terry E. Miller, Esq., for the protester.
Demetria Carter, Esq., and Timothy Lasko, Esq., Department
of the Navy, for the agency.
Christine F. Davis, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency conducted prejudicially misleading discussions on a negotiated procurement where award was to be made to the low-priced, technically acceptable offeror, when it repeatedly informed the protester that its price was well below the government estimate--which reasonably caused the protester to raise its price--and then made award to an offeror whose price was similarly below the government estimate.

DECISION

Ranor, Inc. protests the award of a contract to Precision Components Corp., under request for proposals (RFP) No. N68335-93-R-0198, issued by the Department of the Navy, Naval Air Warfare Center, for intermediate cylinders. Ranor argues that the Navy misled it during discussions.

We sustain the protest.

The intermediate cylinder is used in the catapult system of an aircraft carrier to launch aircraft. The RFP requires the contractor to manufacture this cylinder in accordance with the designated performance, function, and design specifications. The RFP requested firm, fixed-prices for 1 first article, 151 production units and 9 option units. The RFP contemplated a single award to the technically acceptable offeror whose total price on all items was low.

Six offerors submitted initial proposals by the August 3, 1993, proposal receipt date. Ranor's price was low, another offeror's price was next low ("Offeror A"), and Precision's price was fourth low. Although the RFP incorporated the

clause at Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which states that the government intends to award a contract without discussions, the agency concluded that discussions were necessary to address perceived pricing deficiencies in the proposals. As stated in the pre-negotiation Business Clearance Memorandum, the agency sought discussions because "two offerors, Ranor and [Offeror A], had pricing that was below the government estimate." In addition, the agency desired discussions because each initial proposal, except the awardee's, had failed to allocate any start-up or testing costs into the first article price, which had the effect of limiting progress payments under the RFP's first article clause.

Accordingly, on August 17, the contracting officer issued a letter to Ranor and Offeror A, which stated, "[w]e suspect a mistake in your offer Your offer is not in line with historical pricing and is much lower than the government estimate." The letter then identified the production unit price of the prior contract, which was higher than either Ranor's or Offeror A's price, and stated that this contract had been terminated for default.²

On August 25, Ranor requested the opportunity to revise its price to correct an alleged mistake in its proposal. The contracting officer questioned Ranor about its proposed correction in an August 26 telephone conversation, and Ranor's president explained that its unit price was somewhat understated because the firm had not used the current labor rates in its estimating model. The contracting officer then questioned Ranor's failure to allocate any start-up costs to its first article price, which she stated could deprive Ranor of a meaningful progress payment when the first article was accepted. The contracting officer advised that most firms would not adopt Ranor's pricing strategy and that it would benefit Ranor to restructure its pricing.

¹The government estimate was based upon the historical pricing offered by two previous cylinder manufacturers, neither of which competed for this RFP, except that the government estimate excluded the cost of the raw extrusions for forging the cylinder, which the RFP designates as government-furnished material valued at \$11,000.

²As stated in the agency's letter, the prior contract unit price included the price of the raw extrusions, which this RFP designates as government-furnished material valued at \$11,000. As noted by Ranor, if this amount were subtracted from the referenced prior contract unit price, it appears that the adjusted price would be lower than Ranor's.

On August 27, Ranor increased its proposed price by a moderate amount. However, this revised price was still below the government estimate, as well as the price offered by Offeror A, which did not, at that time, raise its price in response to the discussions.¹ Two factors accounted for Ranor's overall price increase, in roughly equal measure: (1) Ranor increased its production unit price to reflect the current labor rates, and (2) Ranor significantly increased its first article unit price in relation to its production unit price.

On September 22, the contracting officer conducted price discussions with all offerors. Precision's discussion letter noted no pricing deficiencies, and Precision confirmed its offer in a September 27 letter. With respect to Ranor and Offeror A, the contracting officer repeated her advice regarding the first article progress payment terms,² and advised each firm that its overall price remained "well below the Government estimate," even acknowledging Ranor's August 27 price increase.

On October 13, Ranor and Offeror A increased their proposed prices in response to the agency's request for best and final offers (BAFO). Ranor more than doubled its previously increased first article price; however, Ranor's overall price still remained far below the government estimate. Meanwhile, Precision, in the absence of any noted pricing deficiencies, dramatically reduced its BAFO price, and narrowly overcame Ranor as the low-priced offeror, with a price even further below the government estimate. Indeed, Precision's BAFO approximated the previous prices proposed by Ranor and Offeror A, which the agency had faulted during discussions as being "well below the government estimate."³ However, in its award recommendation, the agency did not compare Precision's BAFO price with the government estimate, but accepted the awardee's price as reasonable based upon

¹Offeror A did revise its first article price to reflect start-up costs, apparently in response to oral discussions, as were conducted with Ranor on this issue.

²Discussions with the remaining three offerors dealt only with the allocation of first article pricing. One offeror subsequently allocated start-up and testing costs to its first article prices, while the other two offerors, including the interim contractor for these requirements, did not.

³Precision's BAFO production unit price is even lower than that in Ranor's initial proposal.

"[a]dequate price competition" and its close proximity to the prices of certain other offerors, including the protester. The agency made award to Precision on December 1, and this protest followed."

Ranor claims that it was misled during discussions by the Navy's suggestions that its price was too low. Ranor claims that the Navy based this advice upon a comparison with an erroneous government estimate that was abandoned as a concern in making award to Precision. Ranor claims that the agency thereby induced it to increase a price that was never unreasonable, noting that the Navy considered Ranor's BAFO price "solid enough to use as a standard for measuring the reasonableness of Precision's offer." Ranor claims that, absent the agency's repeated and misleading advice, it would have been the low-priced offeror entitled to the award.

By law, discussions, when they are conducted, must be meaningful and must not prejudicially mislead offerors. See FAR § 15.610(c); DTH Mgmt. Group, B-252879.2, Oct. 15, 1993, 93-2 CPD ¶ 227. For example, an agency may not misinform an offeror, even inadvertently, of an alleged proposal weakness or deficiency that does not exist or of a government requirement that is not applicable. See Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ ____; DTH Mgmt. Group, supra; Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424.

We conclude that Ranor was misled to its prejudice during discussions. The contracting officer twice advised Ranor (and Offeror A) that their prices were too low in relation to the government estimate during discussions. However, after receipt of BAFOs, the agency did not compare the awardee's BAFO price against this government estimate, even though it too was much lower than that estimate, but concluded that the awardee's offer was reasonable based upon a comparison with the other offers received, including Ranor's. In other words, although the agency had repeatedly advised Ranor that its price was too low based upon a comparison with the government estimate, the agency, in its award decision, abandoned its earlier concern about price in relationship to the government estimate and made award to an offeror whose price approximated the protester's (and Offeror A's) previously offered prices. Given the actual basis for the award, the agency's advice to Ranor during

⁶As Ranor filed its protest within 10 days of award, the agency has suspended performance of the contract in accordance with the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (1) (1988).

discussions suggesting that its price was too low was misleading. See DTH Mgmt. Group, supra.

The agency argues that Ranor did not increase its price because the contracting officer advised that its price was too low, but because Ranor both wished to correct a mistaken labor rate and to incorporate start-up and testing costs into its first article price. Disputing this, Ranor claims that, with the exception of the mistaken labor rate, it would not have increased its price had it not feared that the agency considered its price to be unreasonably low.

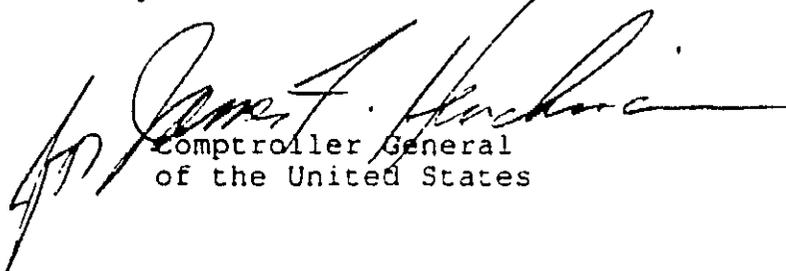
Based upon our review of the record, we find Ranor's assertions more persuasive, particularly considering the agency's twice-repeated advice suggesting that its prices were considered too low. Concerning the issue of first article pricing, Ranor and Offeror A did not merely shift their start-up and testing costs to their first article prices, and correspondingly reduce their production unit prices. Instead, Ranor and Offeror A responded with an overall price increase, enhancing both their first article prices and their production unit prices.⁷ Moreover, even accounting for Ranor's correction to its unit pricing to reflect the higher labor rates, Ranor's overall price was still well below the awardee's BAFO price. Under these circumstances, we think that Ranor would not have been induced to increase its price had it not been misled into believing that its price was considered too low, a concern that was belied by the award to Precision.

We recommend that the Navy reopen discussions, request revised BAFOs and make an award to the low-priced, technically acceptable offeror. We also find that Ranor is entitled to recover its costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.5(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f)(1), Ranor's certified claim for such costs,

⁷In contrast, another offeror, which had not been advised that its prices were too low, restructured its price proposal consistent with the agency's advice concerning the allocation of first article pricing, but dramatically reduced its BAFO price--a course of action which neither Ranor nor Offeror A could comfortably adopt, given the contracting officer's suggestions that their prices were too low.

detailing the time expended and costs incurred, must be submitted directly to the Navy within 60 days after receipt of this decision.

The protest is sustained.



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