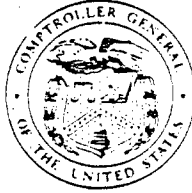


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

51023

FILE: B-183955

DATE: August 29, 1975

MATTER OF: Alton Iron Works, Inc.

97443

DIGEST:

1. Because record shows that items protester proposed to furnish under present negotiated procurement were identical to defective items previously furnished by protester on prior Government contract, and since protester has not contested showing, no basis is seen to question rejection of protester's low offer.
2. Because ASPR § 3-805.2(a) (1974 ed.) provides that changes in Government's requirements that do not warrant complete revision of solicitation and which occur after competitive range for procurement has been established need only be conveyed by amendment to those offerors in competitive range, negotiation with only firm in competitive range for increased requirement of items sought was appropriate.
3. Although recommendation of member of preaward survey team that surveyed firm be "deemed ineligible to bid as a regular dealer within the meaning of the Walsh-Healey Public Contracts Act" was made to procuring office, there is no indication that contracting officer accepted recommendation or formally determined that surveyed firm did not qualify under requirements of cited Act. Consequently, aspect of protest relating to recommendation will not be considered further.
4. By citation of ASPR § 1-313(b) (1974 ed.) as basis of protest it is assumed that protester is contending that specified part procurement should have been made without reference to brand-name part. Since aspect of protest relates to impropriety apparent in solicitation which was questioned only after closing date for receipt of proposals, protest is untimely under § 20.2(a) of Interim Bid Protest Procedures and Standards (4 C.F.R. § 20 (1975 ed.)) which were in effect at time protest was filed.
5. Although untimely protest questioning solicitation defect regarding procurement on specified part basis is not for consideration, procuring activity has advised that future procurements of items sought will be made by reference to Government drawing and specification rather than manufacturer's part number.

Request for proposals (RFP) DSA400-75-R-3212 was issued by the Defense General Supply Center, Richmond, Virginia (DGSC), on January 13, 1975, soliciting offers on the supplying of 418 shield assemblies, Yarway Corporation P/N WC21367-1 Assy 2, NSN 6685-00-798-5485. On January 2, 1975, the contracting officer had determined that the proposed contract to be awarded under RFP -3212 could be negotiated without formal advertising under Armed Services Procurement Regulation (ASPR) § 3-210.2(xiii) (1974 ed.) because he found that adequate specifications could not be drafted to give a detailed description of the shield assemblies. On February 3, 1975, the closing date for receipt of offers, Alton Iron Works, Inc. (Alton), and Yarway Corporation (Yarway) submitted unit price offers of \$59.50 and \$81.99, respectively.

By letters dated February 6 and 11, 1975, Alton verified that the items it intended to supply were in full accordance with the terms of the solicitation. At this time Alton did not object to the terms of the solicitation.

Alton then sent DGSC a sample of the items it intended to furnish under the contract. The sample was apparently considered to be satisfactory. Nevertheless, a preaward survey on Alton was ordered because Alton's name appeared on the Navy Contractor Experience List as having been "delinquent" in past contract performance.

The survey team learned that the items Alton intended to supply were identical to items that Alton had previously supplied to the Government. Reports available to the contracting officer also showed that the mica and gasket shield assemblies on the items previously supplied had failed and that the items were thereafter discarded. As a result of this information, the contracting officer informed Alton by letter of April 16, 1975, that its offer could not be accepted because the items it proposed to furnish were identical to items which the Government had previously discarded under Alton's prior contract.

In the meantime, DGSC increased the number of items required from 418 to 895. Since Yarway had submitted the only acceptable offer on the lesser quantity, negotiations were reopened only with Yarway. The contracting officer determined by price analysis that the price offered by Yarway for the total quantity was fair and

reasonable, and award was made to Yarway on April 25, 1975, for 895 units at a price of \$81.99 each. Alton received notice on May 14, 1975, of award of the contract to Yarway, and Alton's protest was received in our Office on May 19, 1975.

First, the company questions the rejection of its low offer. It is axiomatic in negotiated procurements that the Government is not necessarily required to accept the lowest-priced offer for award. Technical merits of offers as well as other factors are also for consideration in determining the offeror entitled to award. Here the record shows that the items Alton proposed to furnish would be the same as those defective items the Government had previously discarded under Alton's prior contract with the Government. Consequently, and since Alton has not contested this showing, we see no basis to question the rejection of Alton's low offer.

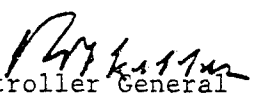
Alton also questions the propriety of an award for 895 items when the original RFP called for only 418 items. When the contracting officer learned that increased quantities would be needed he negotiated only with Yarway because it was the only offeror submitting an acceptable offer on the lesser quantity. We can find no reason to object to this procedure since ASPR § 3-805.4(b) (1974 ed.) provides, in effect, that changes in the Government's requirements that do not warrant a complete revision of the solicitation and which occur after the competitive range for the procurement has been established need only be conveyed by amendment to those offerors determined to be in the competitive range. Under ASPR § 3-805.2(a) (1974 ed.) the competitive range "* * * shall include all proposals which have a reasonable chance of being selected for award." Since Alton had already been rejected from consideration for award, negotiation with only Yarway for the increased quantity was appropriate.

Alton is also concerned with a recommendation of a member of the preaward survey team that Alton be "deemed ineligible to bid as a regular dealer within the meaning of the Walsh-Healey Public Contracts Act." Although this recommendation was made to DGSC, there is no indication that the contracting officer accepted this recommendation or formally determined that Alton did not qualify under the requirements of the cited Act. See the procedures outlined in ASPR § 12-604 (1974 ed.). Consequently, we will not consider this aspect of the protest further.

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Finally, Alton cites ASPR § 1-313(b) (1974 ed.), which states that parts requirements are to be procured on a competitive basis. By this citation, we assume Alton is contending that procurement of the items should have been made without reference to the specified Yarway part. This ground of protest involves an alleged impropriety that was apparent in the RFP prior to the closing date for receipt of proposals. Since this ground of protest was not filed prior to the closing date, it is untimely under § 20.2(a) of the Interim Bid Protest Procedures and Standards (4 C.F.R. § 20 (1975 ed.)) which were in effect at the time the protest was filed. Although this aspect of Alton's protest is untimely and not for our consideration, we observe that DGSC has advised that future procurements of the items will be made by reference to a Government drawing and specification rather than the Yarway part number.

Protest denied.


Acting Comptroller General
of the United States