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DECISION



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

FILE: B-186841

DATE: October 29, 1976

MATTER OF: Fordel Films, Inc.

DIGEST:

1. Decision whether to make award on basis of initial proposals without discussion is wholly within discretion of contracting officer so long as decision comports with regulations.
2. All offerors in competitive range are free to revise their proposals, including price, in response to request for best and final offer.

Fordel Films, Inc. (Fordel), protests against award of contracts by the Naval Regional Procurement Office, Washington, D. C., under requests for proposals (RFP) N00600-76-R-5385, -5397 and -5422.

The basis for protest under RFP No. N00600-76-R-5385 is that the successful offeror was allowed to change its price from the initial proposal in submitting a best and final offer. Fordel also challenges the decision to negotiate with the offerors found to be in the competitive range for a firm fixed-price contract. Alternatively, Fordel challenges the awards made under RFP's Nos. N00600-76-R-5397 and -5422, where award was made on the basis of initial proposals without discussions with the offerors.

Fordel's protest stems from a misconception of procurement by negotiation. Both 16 U.S.C. § 2304(g) (1970) and the implementing Armed Services Procurement Regulation (ASPR) § 3-805.1(a) (1975 ed.) require the contracting officer to conduct written or oral discussions with all responsible offerors in the competitive range, price and other factors considered. There are exceptions to the above rule where award may be made under certain situations on the basis of initial proposals. However, the law and regulations do not require an award be made without discussion; they only permit such an award if the criteria are met. The decision whether to award on the basis of initial proposals when all necessary conditions are present is wholly discretionary with the procuring activity. Halifax Engineering, Inc., B-184064, December 30, 1975, 75-2 CPD 414.

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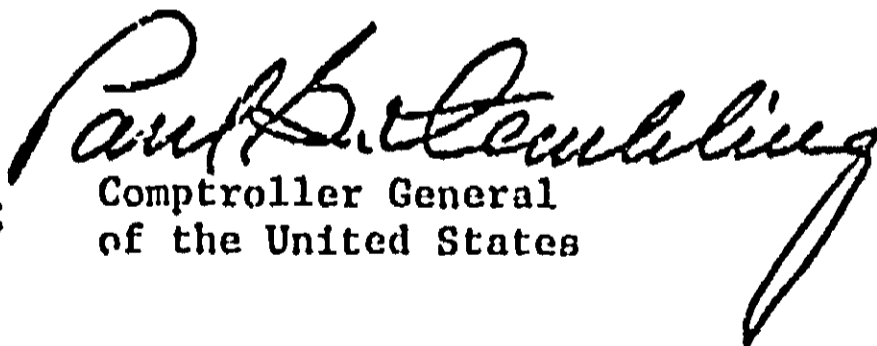
In a negotiated procurement the initially low offeror may be displaced after submission of best and final offers. All offerors in the competitive range are free to revise their proposals, including price, in response to a request for best and final offer. In fact, it is not uncommon for an offeror to withhold its lowest price until the best and final offer. However, the Government reserves the right in the RFP to award a contract on the basis of initial proposals. Therefore, reserving one's best offer, in the expectation of having another opportunity to submit it later in negotiations, could result in loss of the award if the Government makes award without discussions.

With regard to the procurement under the first mentioned RFP (-5385), negotiations were initiated by the contracting officer after significant errors were discovered in the cost breakdowns in the DD Form 633-3's submitted by both Fordel and Hurrah Productions, Inc. Because negotiations concerning these errors had been conducted with both offerors in the competitive range, best and final offers were properly requested pursuant to ASPR § 3-805.3(d).

With regard to the other procurements, minor clerical errors were discovered in the DD Form 633-3's submitted by the otherwise low offeror under each procurement. Because of the nature of the errors and because correction thereof would not affect the relative standings of the offerors, award on an initial proposal basis was properly made pursuant to ASPR § 3-805.1(a)(v) and paragraph 10(g) of the Solicitation Instructions and Conditions.

Accordingly, the protest of Fordel is denied.

Acting


Comptroller General
of the United States