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**DECISION**



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

*J. P. ...  
Proc. I.*

**FILE: E-184560**

**DATE: January 28, 1977**

**MATTER OF: Northrop Services, Inc.**

**DIGEST:**

1. Where solicitation did not prohibit optional proposals, evaluation of optional proposal first submitted by successful offeror as part of its best and final offer did not require agency to reopen negotiations to solicit optional proposals from other offerors since such action would constitute an auction in violation of FPR § 1-3.805-1(b).
2. Where it was discovered after evaluation of best and final offers and selection of successful offeror on basis of technical superiority that available funding only permitted 16-month initial contract award rather than 28 months solicited under RFP, Government's request that successful offeror amend its proposal to reflect award on 16-month basis did not constitute discussions which required reopening of negotiations with all offerors pursuant to FPR § 1-3.805-1(b), since it does not appear extension of such opportunity to other offerors would have affected successful offeror's selection.

Northrop Services, Inc. (Northrop), protests the award of a contract to Grumman Data Systems Corporation (Grumman) under request for proposals (RFP) No. 5-38003 issued by the Research and Technical Assistance Contract Branch, Procurement Division, Department of Commerce (DOC), Washington, D.C. The RFP required the contractor to provide for the management and operation of the Computer Aided Operation Research Facility (CAORF) located at the National Maritime Research Center at Kings Point, New York. Award was made to Grumman at a contract price of \$1,049,364 for an initial performance period of 16 months (1 year plus a 4-month phase-in period).

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Northrop alleges that its proposal was not evaluated fairly by DOC in accordance with the RFP's requirements. In this regard, it questions the propriety of the Grumman award on the grounds that the solicitation required offerors to submit proposals on the basis of a 28-month performance period (2 years plus a 4-month phase-in period). Northrop maintains that DOC improperly allowed Grumman to submit an optional proposal for evaluation and to make proposal revisions after the closing date for the receipt of best and final offers. It asserts that Northrop was not notified during the negotiations of any change in the RFP's requirements which allowed offerors to submit optional proposals or to base their proposals on the 16-month performance period. Therefore, Northrop contends that award to Grumman was improper since DOC did not negotiate with any other offeror on these terms as required by the provisions of Federal Procurement Regulations (FPR) § 1-3.805-1(b) (1964 ed. amend. 153), which states in pertinent part that:

"(b) Whenever negotiations are conducted with more than one offeror, \* \* \* while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see § 1-3.805-1(a)) shall be offered an equitable opportunity to submit such price, technical or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals should be submitted by that date. \* \* \*"

With respect to the timely resolution of its protest, Northrop suggests that DOC intentionally delayed the disposition of its complaint and withheld the information necessary for it to pursue the protest. In this regard, the record reflects that DOC's initial administrative report on this matter was received in our Office on September 22, 1975. However, it was not until July 6, 1976, that we received the DOC's final submission. In view of these actions, by letter dated August 2, 1976, Northrop requested that the contract awarded to Grumman be declared null and void, or that Northrop be provided with other relief such as the recovery of its proposal preparation costs.

The RFP, issued on December 2, 1974, solicited offers for the last phase of a CAORF program which was being implemented in three phases. The contract was to provide for a 4-month preparation period to coincide with Phase II of the program and to include 24 months of

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operation as contemplated under Phase III. In addition, an option provision for a third and fourth year of operation was included in the RFP. The solicitation (page A9, Section G COST PROPOSAL) required offerors to submit separate cost proposals for each of the 4 years. These cost proposals related directly to the plans and schedules required to be submitted for the yearly time related budget projections.

Nine proposals were received by the January 20, 1975, closing date for receipt of proposals. As a result of its preliminary evaluations, the proposal evaluation board recommended that only the proposals of Northrop and Grumman (which were considered to be greatly superior to the other seven) be considered further. Negotiations were held on May 6, 1975, and both offerors were requested to submit best and final offers. Northrop submitted its revised proposal by letter dated May 15, 1975. This letter was characterized by the firm as its "best and final offer." Grumman submitted its best and final offer on May 14, 1975. As a result of the final evaluations, DOC states that Grumman was selected for award because of the superiority of the technical proposal offered under Grumman's original and revised submissions.

Our review of the record shows that the contract awarded to Grumman on June 30, 1975, required performance in accordance with the solicitation as amended and Grumman's January 20, 1975, proposal as amended on May 14, 1975 (best and final offer), and by letter dated June 18, 1975. After receipt of best and final offers, DOC discovered that it lacked adequate funding to permit an initial award for 28 months of performance under a cost-plus-fixed-fee contract. Both offerors submitted their proposals on the basis of two 12-month performance periods and a 4-month phase-in period as required by the solicitation. Northrop's proposal was based upon the use of 6.06 man-years for the 4-month phase-in period and 27.1 man-years for each 12-month period. The successful Grumman proposal was submitted on the basis of man-years allocated respectively at: 5.41 (4-month period); 23.67 (first year); and 26.00 (second year). Only the proposed awardee, Grumman, was requested to resubmit its cost proposal on the basis of performing under an initial award period of 16 months. The remaining 12 months (of the 28 solicited) were to be funded on a fiscal year basis along with the optional third and fourth years of operation. The Grumman proposal was so amended by its

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letter dated June 18, 1975. Grumman's initial price of \$2,057,573 for 28 months was prorated to \$1,049,967, for the 16-month period. DOC maintains the 16-month award was in accordance with the RFP (Introduction and Background, page 5, section 4) which specifically advised offerors, in pertinent part, that:

"The Maritime Administration considers a sum of approximately \$2,300,000.00 to be appropriate for the first 28 months of support, to be divided approximately \$300,000.00 for the first 4 months and \$1,000,000.00 for each of the two following twelve-month periods. \* \* \*

\* \* \* \* \*

"Any contract awarded under this requirement will be funded in fiscal year increments throughout the performance period. \* \* \*" (Emphasis supplied.)

Pursuant to this language, DOC asserts that the RFP properly allowed a contract for the required services to be awarded on a yearly basis.

DOC rejects Northrop's argument that its proposal was not evaluated fairly or that Northrop was denied an opportunity to submit an optional proposal. DOC notes that in response to the request for best and final offers, both offerors submitted revisions to their proposals by May 15, 1975. At that time Grumman submitted its prior proposal and an optional proposal which differed (from the original) by offering in-house instead of subcontractor direct labor. Since the amount of the Grumman optional proposal (\$2,057,573) was nearly identical to Northrop's (\$2,040,752), and cost was not a decisive factor, the award was made to Grumman on the basis of its technical superiority.

Regarding the propriety of accepting Grumman's optional proposal, it is clear from the record that the optional proposal submitted by Grumman was in accordance with the RFP's guidelines and was not prohibited by the solicitation. Northrop had the same opportunity to submit an optional proposal under the solicitation. Therefore, we do not subscribe to the view that Northrop should have been advised of Grumman's optional proposal or that Northrop should have been allowed to submit its own competitive optional proposal after the submission of best and final offers. For DOC to have undertaken such action would have compromised the integrity of the Federal procurement system by engaging in an auction technique prohibited by procurement regulations. See FPR § 1-3.805-1(b), supra.

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Because of the funding problem, DOC states that it was required to make an award in accordance with the statutory restriction against obligations in excess of available funds imposed by 31 U.S.C. § 665(a) (1970) which states, in pertinent part, that:

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law."

Available funding only permitted a 16-month award; however, DOC maintains that it intended to obtain the desired 28-month performance solicited by exercising the 12-month option provided under the solicitation after additional funds became available.

The remaining question is whether DOC should have reopened negotiations with both offerors when it determined after receipt of best and final offers that adequate funding only permitted an award (in accordance with the statute, *supra*) for 16 months. Our Office has held that to allow any offeror an opportunity after best and final offers to modify or revise his proposal constitutes negotiations whether such opportunity resulted from action initiated by the Government or the offeror. See 51 Comp. Gen. 479, 481 (1972). Thus, when a substantial change is made in an RFP which would relax, increase, or otherwise modify the scope of work or requirements solicited, an additional round of best and final offers incorporating the change should be conducted with all offerors.

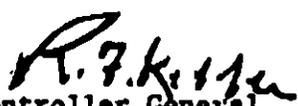
However, we have held that where, after receipt of best and final offers, a reduction in funds will not permit the award originally contemplated it is within sound administrative discretion to extend an opportunity to the successful offeror to accept award for the reduced scope of work, provided the extension of such opportunity to other offerors would not have affected the relative position of offerors. Donald N. Humphries & Associates, et. al, 55 Comp. Gen. 432, 436 (1975), 75-2 CPD 275. We feel it is significant in this case that each offeror had been specifically requested and did submit proposals on the basis of performing, respectively, the phase-in period and each potential year of performance under the contract.

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Grumman had been selected for award because of its technical superiority before it was determined that the funding was not available at that time to commit the Government to the 28 months needed. Furthermore, the revised price of \$1,049,964 (\$65,622.75 per month) submitted by Grumman under the 16-month award was less than its original offer (\$73,484.75 per month) for the 28-month period. Therefore, we do not believe DOC's failure to reopen negotiations in this instance compromised the integrity of the competitive procurement system since it does not appear Grumman's selection as the successful offeror would have been affected. Donald N. Humphries & Associates, supra.

While it is regrettable that the Department of Commerce did not provide an adequate and timely response to the protest to Northrop and this Office, such action does not constitute grounds for nullifying or voiding a valid and binding contract. We are also unable to conclude on the basis of the present record that Northrop is entitled to reimbursement for its proposal preparation cost since there is no indication that the agency's evaluation of offers had been so arbitrary and capricious as to preclude Northrop from an award to which it was otherwise entitled. DOT Systems, Inc., B-183697. June 11, 1976, 76-1 CPD 368.

For the reasons cited above, the protest is denied.

  
Deputy Comptroller General  
of the United States