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DECISION

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

FILE: B-189737

DATE: December 21, 1977

MATTER OF: GTCO Corporation

DIGEST:

Contract awarded on basis of initial proposal without discussion to only offeror proposing to meet specifications is proper where agency had reason to believe item was urgently required.

GTCO Corporation (GTCO) protests the rejection of its proposal under request for proposals (RFP) No. N60921-77-R-0075 by the Naval Supply Systems Command, U.S. Navy (Navy), and award of a contract to Altek Corporation (Altek) at a higher price. GTCO contends the Navy was arbitrary in rejecting its proposal without discussions for failure to meet the accuracy specification when, in fact, the unit offered could be made to meet the specifications in all respects.

The RFP called for fixed price offers to deliver within 30 days a graphic digitizing system which was needed to digitize, for computer analysis, photographic and oscillographic recordings of explosion tests. Of 28 companies solicited, 4 submitted offers. The lowest offeror was disqualified on grounds of nonresponsibility, leaving GTCO as the apparent low offeror. The Navy determined that the unit offered by GTCO did not meet the accuracy specification and, without discussions, awarded a contract to Altek at a price of \$26,400 whereas GTCO's proposed price was \$19,375.

Section F.1.2.4 of the specifications provided:

"Absolute Accuracy: Within ±.005. Accuracy requirement must be met even when material being digitized contains pencil or ink marks."

GTCO submitted with its proposal, a brochure entitled "Datatizer" which included general specifications showing

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accuracy of ± 0.010 . The cover letter submitted with GTCO's proposal stated that it would supply the digitizer described in the literature submitted and further stated the belief that the proposed system satisfied all requirements.

An offeror must demonstrate affirmatively the merits of its proposal and it runs the risk of proposal rejection if it fails clearly to do so. Electronic Communications, Inc., B-183677, January 9, 1976, 76-1 CPD 15. In our opinion, the Navy reasonably concluded that the system described and proposed by GTCO would not satisfy the Navy's accuracy specification. The expression of belief in GTCO's proposal cover letter that the item described in its literature met the Navy's requirements was patently incorrect as to accuracy; there is no indication in the proposal of any intent of GTCO to modify its digitizer to comply with the Navy's specification.

The Navy asserts that because this procurement followed two previous contracts for a digitizer which had been terminated for default, the need had become urgent. The digitizer was to be used in connection with the Advanced Lightweight Torpedo Program under which as many as 32 torpedo shot records per day were required to be analyzed immediately for guidance on subsequent shots. The Navy argues that it obtained adequate competition and a reasonable price. Navy also believes that contract award without discussions was authorized by Armed Services Procurement Regulation (1975 ed.) (ASPR) § 3-805.1(a)(iii) which permits forgoing discussions with all offerors in the competitive range if the date of delivery will not permit discussion.

In a negotiated procurement, a technical deficiency as exists here may be resolved by oral or written discussions. Although ASPR § 3-805.1 generally requires the conduct of oral or written discussions, there are exceptions to this rule. As indicated, one exception is where the date of delivery will not permit discussions. GTCO contests the validity of the urgency determination because Altek requested and received delivery date extensions. These subsequent developments may or may not give rise to questions as to the degree of the urgency relied upon by the Navy to make an award without discussions. However,

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the reasonableness of the agency's decision not to negotiate must be viewed in the light of the circumstances existing at the time that decision was made. On the record before us we see no reason to question the urgency perceived by the Navy at the time it decided to proceed, without discussion, to award a contract to the only offeror proposing to furnish an acceptable digitizer. Moreover, the record indicates that the contractor's bases for requesting extensions arose after the award. Although the protester contends that there was a three month delay in the Government's acceptance of the item, we note that the contract required the contractor to deliver the item by August 15 and delivery actually was delayed a total of seven weeks.

For the reasons stated the protest is denied.


Deputy Comptroller General
of the United States