

DECISION



13227 P2 I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-196667

DATE: March 25, 1980

MATTER OF: Bow Industries, Inc.

DLG 042 08

[Protest of Proposal Rejection]

DIGEST:

1. Where protester states it added feature to equipment to achieve 96-percent effective cleaning requirement in accordance with brand name or equal salient characteristic and referred to feature in letter accompanying offer, proper basis existed for rejection of offer since statement in descriptive literature as to 90-percent cleaning efficiency remained unchanged and protester admittedly did not state in letter accompanying offer that feature was added to comply with 96-percent requirement.
2. Statement in letter accompanying offer that equipment is offered as equal to brand name specified in RFP does not satisfy descriptive data requirement of brand name or equal clause.
3. Although protester complains that contracting agency did not discuss offer with it prior to award to awardee, solicitation instructions and conditions provided for award on initial proposal basis and no discussions were held with awardee either.
4. Preaward rejection notice need not be given prior to award where award is to be made within few days after determination to reject is made. In any event, failure to give prompt notice of rejection would be procedural irregularity which does not affect validity of rejection or award.
5. Whether stopwork order should be issued during pendency of protest is discretionary matter for contracting agency.

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The Department of the Navy (Navy) issued request for proposals (RFP) N00189-79-R-0445 for an advanced blade and cleaner for magnetic tape model 740C as manufactured by General Kinetics, Inc. (GKI), or equal. The RFP contained the standard brand name or equal clause and several salient characteristics.

Proposals were opened on September 14, 1979, with the following results:

Bow Industries, Inc.	\$ 7,054.82
General Kinetics, Inc.	12,290.00

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The offer of Bow Industries, Inc. (Bow), was rejected on the basis that the product offered by Bow failed to meet six salient characteristics. Upon reevaluation of the Bow proposal after the protest against the rejection, the Navy concluded that the Bow product failed to satisfy only two salient characteristics--(1) endless loop band blade cleaner of gemstone or carbide, and (2) minimum 96-percent effective cleaning of tape. Bow contends that its product meets both of these characteristics.

Although the original reason for rejection of the Bow offer was wrong, that is not relevant if a valid basis existed for the rejection of the offer. Malott & Peterson-Grundy Contractors et al., B-191887, January 3, 1977, 79-1 CPD 3. Further, if one of the two remaining reasons advanced by the Navy is a proper basis for rejection of the offer, the other basis is academic and need not be considered. Malott & Peterson-Grundy Contractors et al., supra; A. A. Lasher, Inc., B-193932, March 14, 1979, 79-1 CPD 182.

With respect to the salient characteristic for a minimum 96-percent effective cleaning of tape, we note that Bow's descriptive literature furnished with its offer specified "90 percent cleaning efficiency." While Bow states it added

two tissue-wiping stations to its equipment to achieve the required 96-percent effective cleaning and referred to the wiping stations in the letter accompanying its offer, the statement in its descriptive literature as to 90-percent cleaning efficiency remained unchanged and admittedly the letter did not state that the two wiping stations were added to comply with the 96-percent requirement.

The brand name or equal clause in the RFP states that "If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, he shall * * * clearly mark any descriptive material to show the proposed modifications." Moreover, the statement in the letter accompanying the offer that "Bow Industries, Inc. offers our Model * * * as an equal to the GKI Model 740C" does not satisfy the descriptive data requirement of the brand name or equal clause. Omni-Spectra, Inc., B-184341, April 14, 1976, 76-1 CPD 251. Therefore, we conclude that a proper basis existed for the rejection of the Bow offer.

Although Bow complains that the Navy did not discuss the offer with it prior to award to GKI, we observe that the Navy did not conduct discussions with GKI either and that award was made on an initial proposal basis. In that connection, Standard Form 33, Solicitation Instructions and Conditions, states:

"The Government may award a contract based on initial offers received without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government."

Further, while Bow complains that it was not given any information about the results of the evaluation of its offer before the award was made to GKI, we note that, although Defense Acquisition Regulation (DAR) § 3-508.2 (1976 ed.) provides for notice to the source submitting an unacceptable proposal upon a determination being made by the contracting officer, it also provides that the notice need not be given where the proposed contract is to be awarded within a few days. In this case, the contracting officer made the determination of unacceptability on October 18 and the award was made on October 23. In any event, if the Navy did not notify Bow promptly, it would be a procedural irregularity which does not affect the validity of the rejection or the award. See Airwest Helicopters, Inc., B-193277, June 7, 1979, 79-1 CPD 402.

Finally, Bow's request that a stopwork order be issued during the pendency of the protest is a discretionary matter for the contracting agency. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289.

Accordingly, the protest is denied.


For the Comptroller General
of the United States