

DECISION

PL-11
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of Agency Decision Not to Consider Proposal 13842]

FILE: B-194356

DATE: May 28, 1960

MATTER OF: Galaxy Aircraft Instruments Co., Inc.

*DL604712***DIGEST:**

Agency should conduct discussions with offerors rather than make award on basis of initial proposals where it receives competitively priced albeit nonconforming offer (offeror failed to acknowledge material amendment adding additional work) since it is highly possible that conducting discussions would result in an award at a price lower than if made on basis of initial proposals, discussions would be neither time consuming nor costly, and services being procured are not urgently needed.

Galaxy Aircraft Instruments Co., Inc. (Galaxy) protests the Department of the Air Force's decision not to consider its proposal under request for proposals No. F34601-79-R-0842. The Air Force refused to consider Galaxy's proposal because the protester did not acknowledge a material amendment to the RFP and because it intends to make award on the basis of initial proposals. Award has been withheld pending resolution of the protest. *AGC00035*

The RFP, which was set aside for small businesses, solicited offers for a fixed price indefinite quantity contract for the overhaul of phase detectors used in C130 aircraft engines. The RFP also indicated certain "over and above work", not covered by the basic overhaul price, would be required of the contractor at the direction of the administrative contracting officer. The RFP did not, however, indicate what constituted "over and above work" or provide a space for offers for such work. Additionally, offerors were advised that the Government reserved the right to make award on the basis of initial proposals.

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Prior to the closing date for receipt of proposals, the Air Force discovered the RFP had not set forth what constituted "over and above work" and contained a number of other "flaws". Accordingly, the Air Force issued an amendment to the RFP adding a list of "over and above work" and providing a space for fixed hourly rates for such work to be entered, as well as making a number of other changes.

Offers were received from eight firms and were evaluated by the Air Force. This evaluation revealed that while Galaxy's offer for overhauling services was competitively priced, Galaxy failed to acknowledge the amendment to the RFP and had not submitted an offer for the "over and above work."¹ As price competition under the RFP appeared to the Air Force to be adequate, the Air Force decided that award on the basis of initial proposals would be appropriate. Accordingly, the Air Force sent a letter to Galaxy indicating that its offer could not be considered because it failed to acknowledge the amendment to the RFP. Thereafter, Galaxy filed a protest with our Office challenging the Air Force's actions.

In a negotiated procurement, allowing an offeror to acknowledge a material amendment after the closing date for receipt of proposals constitutes discussions. 50 Comp. Gen. 202 (1970). Thus, as we see it, the main issue presented by Galaxy's protest is whether the Air Force should make award on the basis of initial proposals without benefit of discussions, thereby precluding further consideration of Galaxy's offer. In this regard, we note Defense Acquisition Regulation (DAR) § 3-805.1 (Defense Acquisition Circular 76-7, April 29, 1977) requires, subject to certain exceptions, that discussions be conducted in all negotiated procurements. One such exception to the requirement for discussions is where offerors have been advised that award might be made on the basis of initial proposals and where "it can be clearly demonstrated from the existence of adequate competition * * * that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price * * *." See DAR 3-805.1(v).

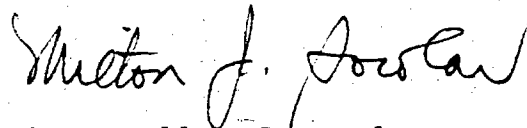
Here, the Air Force indicates it believes adequate competition existed under the RFP and that an award on the basis of initial proposals would be made at a "fair and reasonable price." Although we are not prepared to

¹Since this is a negotiated procurement and no award has been made, we can not indicate the prices received by the Air Force in response to the RFP.

question the Air Force's determination that an award on the basis of initial proposals would be made at a fair and reasonable price, we question the wisdom of not conducting discussions with all offerors within the competitive range.

The record indicates that Galaxy's offer on basic overhauling services is competitively priced and that it is highly possible that an award could be made at a price lower than that of the low conforming initial proposal if Galaxy were given an opportunity to revise its proposal to include "over and above work". The record further indicates that conducting discussions would be neither time consuming nor costly, and that the services are not urgently needed. Under these circumstances we believe the Air Force should not make award on the basis of initial proposals but rather should conduct discussions with all offerors. See 47 Comp. Gen. 279 (1967).

In light of the above, the protest is sustained.



For the Comptroller General
of the United States