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DECISION



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

FILE: B-197835 DATE: October 10, 1980

MATTER OF: Timex Corporation DL605313

DIGEST:

1. Protester's contention that contracting officer failed to evaluate and consider advantageous cost elements of technical proposal is without merit where solicitation did not require offerors to submit technical proposals and contracting officer was faced only with an evaluation of specified price as a basis for award.
2. Where offerors submit proposal prices based on RFP's detailed specifications and no offeror takes exception to RFP's requirements, there is no basis to conclude offerors did not compete on equal basis.
3. Contracting officer's decision not to open negotiations after receipt of late price reduction is not abuse of discretion where competitive initial price proposals are received and no significant dollar reduction below low offeror is represented by late proposal.

Timex Corporation (Timex) protests the award of a contract to Condor Pacific Industries (Condor) under request for proposals (RFP) F42600-79-R-5919 issued by the Department of the Air Force. The RFP requested fixed-price proposals for a quantity of 1,570 pitch, yaw and roll gyroscopes for use in the F-4 aircraft. No technical proposals were requested.

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Timex presents three grounds of protest. Because this procurement was negotiated rather than formally

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[Protest Involving Proposal Prices]

advertised, the protester contends that the contracting officer was obliged to evaluate its technical proposal. The evaluation, in Timex's view, would show that its proposal actually was lower in total cost than Condor's. Timex also maintains that offerors did not submit proposals on the same basis, thereby prejudicing the protester. Finally, Timex argues that the Air Force should have considered Timex's late price reduction as a basis for opening negotiations and should not have made an award on the basis of initial proposals.

We deny the protest.

Timex had manufactured gyroscopes for the F-4 aircraft on a prior procurement. In this case, even though the RFP did not require an offeror to submit a technical proposal, Timex developed a technical proposal showing that its gyros already had undergone qualification testing and indicating that the Government could elect to forego the specified aircraft compatibility testing. The Timex proposal included test data and an analysis of the specifications for this and the prior Air Force procurement to show that no further compatibility testing of its equipment would be required.

The RFP provided for award on the basis of proposed price; it made no provision for consideration of savings available if certain testing did not have to be accomplished. Thus, the Air Force could not properly consider the "savings" allegedly available in connection with the Timex technical proposal. Once offerors have been informed of the criteria against which their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to those criteria. John Snow Public Health Group, Inc., B-196243, May 28, 1980, 80-1 CPD 366. Under these circumstances, evaluation of the gratuitous technical proposal would have been inconsistent with the evaluation criteria upon which offers were requested and thus would have been improper.

In connection with its second ground of protest, Timex maintains that offerors did not compete and were not evaluated on the same basis because unlike other offerors, Timex submitted its proposal based on modifications to the specifications which were discussed at a preproposal conference. These modifications, Timex states, were inadvertently omitted from the RFP.

It is a fundamental principle of Federal procurement law that a solicitation must be drafted in such a manner that offers can be prepared and evaluated on a common basis. Comptek Incorporated; Ontel Corporation, 54 Comp. Gen. 1080 (1975), 75-1 CPD 384. In this connection, Defense Acquisition Regulation (DAR) 3-805.4 requires the Government to issue a written amendment whenever the scope of work or solicitation requirements are relaxed, increased or otherwise modified.

Here, the Air Force admits that some of the proposed modifications discussed at the preproposal conference were omitted from the specifications. The Air Force asserts that these modifications consisted of some minor relaxation of tolerances, and we note that none of the offerors took exception to the RFP's stated requirements. Moreover, despite the allegation, Timex has not shown how it could have been prejudiced by basing its proposal on relaxed specifications when other offerors essentially did not. In addition, we note that Timex offered the Air Force the same gyroscope it had supplied on a previous procurement and that prior procurement was based on a specification which did not include these modifications.

With respect to its third ground of protest, *i.e.*, the agency's refusal to consider its late price reduction, the following facts are relevant. The initial proposal due date was October 4, 1979. Because all proposals were due to expire on December 4, 1979, and because the Air Force had not completed its evaluation of Condor, the apparent low offeror at that time, the Air Force requested that all offerors extend their proposal acceptance period to January 4, 1980. All offerors except Timex unconditionally extended their offers. By letter dated December 6, Timex not only extended its offer but reduced its unit price. Timex contends that the Air Force should have opened negotiations upon receipt of its price reduction, rather than make an award on the basis of initial proposals as the Air Force intended.

In this respect, Timex argues that its late price reduction could serve as an indication that opening negotiations, rather than making an award on the basis of

initial proposals, would prove highly advantageous to the Government, and notes that this position is supported by our decision, Corbetta Construction Company of Illinois, 55 Comp. Gen. 201 (1975), 75-2 CPD 144. Corbetta, however, does not require that such negotiations be held. Unlike this case, Corbetta involved the evaluation of technical as well as cost proposals and included a number of questionable judgments involved in the decision to award a contract on the basis of initial proposals. For example, the technical proposals of both the protester and particularly the successful offeror substantially varied from the solicitation's technical requirements. We noted that "one of the necessary criteria of 'adequate price competition' - the only apparent basis which could be relied on here to justify an award on the basis of initial proposals - is that there are at least two offers responsive to the expressed requirements of the solicitation," a situation which we did not believe existed under the circumstances.

There were other distinguishing factors which when taken together with the protester's substantial, albeit late, price reductions, led us to conclude that there was an indication that discussions might be in the Government's best interest. Thus, while we recognized that the decision to open negotiations after receipt of a late price reduction is discretionary with the contracting officer "where the late modification fairly indicates negotiations would prove to be highly advantageous to the Government," 47 Comp. Gen. 279, 284 (1967), implicit in Corbetta is our belief that the contracting officer's exercise of that discretion was not reasonable.

We do not, however, have a basis to question the contracting officer's judgment here, for we recognize that unless a potentially significant dollar reduction below that of the low offeror is set out in the late proposal, negotiations need not be opened. 47 Comp. Gen., supra; B-176407, September 27, 1972; B-168085, December 29, 1969. In B-168085, supra, a potential \$667 price reduction was deemed insufficient to fairly indicate that the conduct of negotiations after receipt of initial proposals would either prove to be highly advantageous or represent a

substantial savings. In B-167281, November 13, 1969, no negotiations were held even in the face of a \$32,000 potential savings. Here, the solicitation had generated a high level of price competition, with three of the four proposals roughly within one percent of each other, Condor at \$647, one at \$649 and Timex at \$654 per unit. The price competition in our view fairly indicated that prices received were reasonable. Thus, while the potential \$36,000 saving indicated by Timex's late price reduction is not unimportant (even when compared to the \$1,015,790 award price) and the contracting officer could properly have opened negotiations rather than award on the basis of initial proposals, nonetheless, our prior cases indicate that he need not so do if he reasonably believes there is no significant saving to be achieved. We do not believe that offerors should be permitted to disrupt an orderly procurement procedure by being able to unilaterally postpone the award of a contract for needed supplies merely by offering late price reductions. To hold otherwise would defeat the purpose of the late proposal solicitation provisions--to alleviate confusion, to assure equal treatment of all offerors, and to maintain the integrity of the competitive system. See Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD 366.

The protest is denied.



For the Comptroller General
of the United States