

DECISION



18188 *Fitzmaurice*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Air Force Contract Award]

FILE:

B-197302.2

DATE: May 21, 1981

MATTER OF:

Century Industries, Inc.

DIGEST:

1. Contracting agency's decision after receipt of best and final offers to delete 128 out of approximately 6,000 items from solicitation without issuing written amendment was reasonable under circumstances in view of unique nature of procurement and fact that deletions had no effect on relative standing of offerors.
2. Agency's later deletion of nine additional items from low offeror's proposal is not basis for protest since it had no impact on evaluation process or award determination.
3. Acceptance of low offeror's voluntary price reduction was proper as late modification of otherwise successful offer making contract terms more favorable to Government.
4. Contracting agency was not required to reject low offeror's proposal as nonresponsive since concept of responsiveness is not applicable to negotiated procurements.

Century Industries, Inc. (Century), protests the award of a contract to B&D Supply Company of Arizona, Inc. (B&D), under request for proposals (RFP) No. F49642-79-R-0470 issued by Andrews Air Force Base (Air Force).

For the reasons indicated below, we find no basis to disturb the award.

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The RFP solicited offerors for a contractor-operated civil engineer supply store (COCESS) at Andrews Air Force Base. The purpose of the COCESS is to provide the base civil engineering personnel with the electrical, plumbing and other supplies they need to perform their mission. The successful contractor is required both to stock the store and to operate it on a daily basis. Thus, due to the nature of this procurement, each offeror was faced with the task of going through more than 1,400 pages of item lists and offering prices on thousands of separate items.

The RFP was issued on March 4, 1979, and only B&D and Century submitted proposals. Between March 1979 and April 1980, nine amendments were issued to provide changes and clarifications. Among these changes was the deletion of many individual line items. This reduced the total number of items solicited from approximately 8,000 to approximately 6,000.

During the evaluation of the best and final offers, the Air Force deleted an additional 128 items from the solicitation. According to the Air Force, these deletions were necessary because of various reasons, but most commonly because one or both of the offerors based its item price on the wrong unit of measure; for example, the price per box (apparently without an indication of how many items in a box) instead of the price for each item. However, the Air Force did not solicit revised proposals. Rather, it simply excluded these 128 items from the evaluation.

B&D was the low aggregate offeror based on the total prices for all the items (after certain corrections in addition were made to the proposals). The Air Force then discovered the 128 line items mentioned above. The deletion of these items from both proposals, plus an adjustment for three pages of prices from the B&D proposal inadvertently added as a part of the Century proposal, did not change the order of proposals which then became \$3,559,544.60 for B&D and \$3,565,814.03 for Century.

While the Air Force was conducting the evaluation, B&D voluntarily offered to reduce its proposal price by \$83,066.09 because of price changes it had received from its vendors. The Air Force decided that under the provisions of the RFP it could accept B&D's voluntary price reduction so long as B&D was in fact the low offeror. However, there still remained a problem in B&D's proposal with nine line items which the contracting officer considered unreasonable as to price. To resolve the problem, these nine items were deleted from both proposals. The Air Force found that B&D remained low with a total price of \$3,519,589.72 while Century's price was now \$3,531,543.64, about a \$12,000 difference between the two totals. In light of this, the Air Force subtracted the \$83,066.09 price reduction from B&D's total and awarded B&D a 1-year contract for \$3,436,523.63. The contract also included two 1-year options.

Century's protest can be summarized as follows:

- (1) The Air Force violated Defense Acquisition Regulation (DAR) § 3-805 (1976 ed.) when it deleted the 137 line items (128 plus 9) mentioned above since it was required by the regulation to amend the solicitation and provide the offerors with the opportunity of submitting revised best and final offers;
- (2) If the Air Force is permitted to make unilateral deletions, it was required to do so in a consistent manner, which it did not do, having failed to delete certain items Century offered that were clearly unreasonable as to price;
- (3) The Air Force should not have accepted B&D's price reduction since this was an unauthorized late modification of its proposal; and

(4) B&D's failure to include a manufacturer's name and/or part number for a considerable quantity of the solicited items rendered its offer nonresponsive.

DAR § 3-805.4 (1976 ed.) sets forth the general rule governing the manner in which changes in Government requirements are to be communicated to offerors and potential offerors. It provides that when, either before or after receipt of proposals, changes occur in the Government's requirements or a decision is made to relax, increase, or otherwise modify the scope of the work or statement of requirements, such change shall be made in writing as an amendment to the RFP. Our Office has also held that when there are changes in the Government's requirements, all qualified offerors must be notified and given the opportunity to compete under these changed requirements. CompuScan, Inc., 58 Comp. Gen. 440 (1979), 79-1 CPD 288.

Nevertheless, despite these general rules, we have also recognized that due to the large numbers of individual items required under a COCESS procurement, it is not always possible for such a procurement to comply rigidly with basic principles of Federal procurement practice; some flexibility is necessary. See H. M. Sweeny Company, B-197302, June 12, 1980, 80-1 CPD 413. In this regard, the Air Force states that the items deleted from the solicitation were only a small fraction of the total number of items being solicited and cites Telos Computing, Inc., B-190105, March 27, 1978, 78-1 CPD 235, for the rule that the deletion of so few items is de minimis. Moreover, it emphasizes that these items were not deleted selectively in order to help lower B&D's proposal price. It also emphasizes the great amount of time needed to conduct a COCESS procurement and the administrative burden of preparing the solicitation and evaluating the proposals. Therefore, in view of all these factors, the Air Force believes that its decision to eliminate the 137 items from both proposals without amending the RFP or notifying the offerors of the deletions was a reasonable course of action and resulted in a fair evaluation of the proposals. We agree.

In view of the unique nature of the COCESS procurement, we believe that the Air Force's actions must be measured against a standard of reasonableness and good faith. As indicated above, the Air Force expended a great deal of time and effort conducting this procurement, having amended the solicitation many times before deciding that an award should be made based on the best and final offers as submitted minus 128 items. In the Air Force's opinion, these 128 items could not be evaluated, and this has not been disputed. The Air Force also claims that the 128 deletions were chosen on a purely objective basis without regard for price differences between the two proposals. Furthermore, the Air Force indicates that roughly the same number of items was found in each proposal which it could not evaluate and that when it removed a line item from one proposal it removed it from the other. In light of these factors, as well as the administrative complexity of a COCESS procurement, we believe that the Air Force's evaluation was reasonable.

As to the later deletion of nine more items from B&D's proposal for being unreasonable as to price, we do not believe that this is a basis for protest since, once B&D was determined to be the low offeror, the additional deletions had no impact on either the evaluation process or the award determination. B&D was the low offeror before the nine items were deleted and it remained low after the deletions were made.

Regarding the Air Force's acceptance of B&D's price reduction, we note that the acceptance of such a price reduction from the otherwise low offeror is permitted by the RFP. DAR § 7-2002.4, incorporated by reference. Since B&D was determined to be the low offeror, we find nothing objectionable with the Air Force accepting a late modification of an otherwise successful offer which makes the terms of the contract more favorable to the Government.

Finally, regarding Century's claim that B&D's proposal was nonresponsive, we note that the concept of "responsiveness" does not apply to negotiated procurements. See, e.g., Self-Powered Lighting, Ltd., 59 Comp. Gen. 298 (1980), 80-1 CPD 195. The fact

that an initial proposal may not be in full accord with the requirements of the RFP is not sufficient reason to reject the proposal if the deficiencies are reasonably susceptible to being made acceptable through negotiations. Therefore, there was nothing improper with the Air Force decision to conduct discussions with B&D rather than to reject its proposal as nonresponsive. Further, the determination whether a proposal meets technical specifications is generally a matter within the contracting agency's discretion. See Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

Protest denied.

Milton J. Fowler

Acting Comptroller General
of the United States