

DECISION

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

FILE: B-209474**DATE:** May 16, 1983**MATTER OF:** Kleen-Rite Corporation**DIGEST:**

1. A contracting agency's failure to confirm in writing an oral request for best and final offers does not automatically result in the disturbance of the contract award.
2. Only best and final offers submitted by common cutoff date are for consideration.

Kleen-Rite Corporation (KRC) protests the award made by the Department of the Navy under request for proposals (RFP) No. N00189-82-R-0316 for mess attendant services for the Naval Air Station, Bermuda.

We deny the protest.

KRC protests on two grounds, each involving a request for best and final offers.

The first ground of protest is that the letter making changes in the RFP and requesting best and final offers by September 17, 1982, is dated September 28, 1982, and was received on September 30, 1982. Thus, KRC states that it did not have the information necessary to prepare a best and final offer by September 17, 1982. In that connection, we note that KRC did not submit a best and final on September 17. However, the record indicates that on September 9, 1982, the contracts negotiator advised KRC and the other offerors in the competitive range by telephone of the changes in the RFP and requested best and final offers by 4 p.m., on September 17, 1982. KRC does not deny the telephone conversation. Thus, although KRC did not receive the written confirmation until after September 17, it did have oral advice of the necessary information on September 9. Our Office has held that the failure to confirm in writing an oral request for best and final offers would not result in the disturbance of the award so long as all offerors in the competitive range were informed of the request and any changes in the RFP and were afforded an

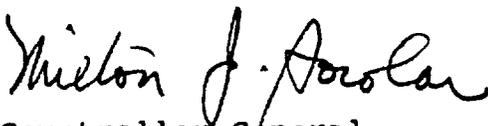
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opportunity to compete on a common basis. See Education Turnkey Systems, Inc., 57 Comp. Gen. 8 (1977), 77-2 CPD 267; Nationwide Building Maintenance, Inc., B-186602, December 9, 1976, 76-2 CPD 474.

The second ground of protest concerns a second request for best and final offers. After the receipt of the first best and final offers, the contracting officer learned that the Department of Defense (DOD) policy concerning the evaluation of prompt-payment discounts had been changed so that those discounts would no longer be considered in the evaluation of offers. See Defense Acquisition Regulation § 2-407.3 (Defense Acquisition Circular No. 76-36, June 30, 1982). Since the RFP contained a provision that advised offerors that prompt-payment discounts would be evaluated, the contracting officer called for a second round of best and final offers on September 23, 1982. KRC and the other offerors were contacted by telephone again and advised of the change in DOD policy. In addition, they were informed that oral offers were to be received by the close of business on September 24. This time KRC submitted a best and final offer.

On September 27, after learning that award had not been made, KRC requested that it be permitted to change its September 24 offer. The contracts negotiator advised KRC that its changed offer would be considered if an immediate written confirmation was received. Subsequently, the contracts negotiator was advised by the contracting officer that KRC's changed offer submitted after the common cutoff date could not be considered. KRC protests the refusal to consider the changed offer.

It is clear from the record that September 24, 1982, was the cutoff date given to each prospective offeror. The fact that the contracts negotiator mistakenly agreed to consider KRC's September 27 offer cannot alter the situation. Only best and final offers submitted by the common cutoff date are for consideration. 50 Comp. Gen. 117 (1970); 48 id. 583 (1969); 48 id. 536 (1969).

for 
Comptroller General
of the United States